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INTERSTATE COMMERCE COMMISSION REPORTS

VOLUME 51

DECISIONS OF THE
INTERSTATE COMMERCE COMMISSION
OF THE UNITED STATES

AUGUST, 1918, TO DECEMBER, 1918

REPORTED BY THE COMMISSION



WASHINGTON
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¹ On November 5, 1918, Commissioner Anderson resigned.

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51 I. C.

INTERSTATE COMMERCE COMMISSION REPORTS.

No. 9424.

DOW CHEMICAL COMPANY

v.

PERE MARQUETTE RAILROAD COMPANY ET AL.

Submitted January 11, 1918. Decided August 8, 1918.

Storage charges assessed at Midland, Mich., on certain carloads of benzol, oils, sulphuric acid, charcoal, and chloride of sulphur found to have been illegal. Refund directed and complaint dismissed.

Hal H. Smith and Thomas B. Moore for complainant.

Frederick B. Brown for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

BY DIVISION 1:

The complaint herein, filed December 30, 1916, alleges that the storage charges assessed by the Pere Marquette Railroad Company, hereinafter called the defendant, at Midland, Mich., on numerous carloads of oils, benzol, sulphuric acid, charcoal, and chloride of sulphur, shipped from certain interstate points subsequent to March 4, 1915, were illegal, unreasonable, unjustly discriminatory, and unduly prejudicial. Reparation is asked.

Complainant owns the land occupied by its plant at Midland, situated adjacent to defendant's main line. There are about 23,860 feet of standard-gauge sidetracks upon complainant's premises. The track material for about one-half of this system was supplied and is owned and the tracks were constructed and are maintained by defendant under successive agreements with complainant, to be and remain the property of defendant and under its exclusive control, except as therein otherwise provided. A further restriction is that complainant shall not grant or attempt to grant to any third party a right to use the tracks; and for complainant's failure to prefer defendant for the transportation of freight to and from the plant,

or at defendant's option and upon stipulated notice defendant has the right to enter upon the premises and remove its tracks. The remaining tracks are owned and maintained by the complainant. All are used exclusively as plant facilities and are connected with defendant's main line. The motive power and employees of defendant are not permitted within the plant inclosure except in emergencies, and then only after permission has been obtained from complainant, the switching between the plant and interchange tracks being done by engines manned by complainant's crews.

Since March 4, 1915, defendant has delivered to complainant, upon the interchange siding, numerous carload shipments of benzol, sulphuric acid, chloride of sulphur, charcoal, and oils, which require red, yellow, white, or green labels under the regulations prescribed by us for the transportation of explosives and other dangerous articles. Complainant moved the shipments from the interchange track to various points within the plant inclosure and there held the cars in excess of the free time. Defendant's storage tariff provided and provides a charge of \$2 per day after the free time expires, Sundays and legal holidays excluded, in addition to demurrage charges, on carload shipments of such commodities, received for delivery, held to complete a shipment or for forwarding directions, "if stored in or on this company's premises." The charges assailed were for storage in cars within complainant's plant, and while it is testified that at least in most cases the cars were held upon complainant's own tracks and that certain of the shipments moved in its own tank cars, the case will be considered as if defendant's tracks and equipment only were used.

By established usage, with reference to property, the word "premises" contemplates real estate and its appurtenances, and it is clear that it would not include such ambulatory personalty as a railroad car. While, on the other hand, for some purposes it may not be inappropriate to speak of a railroad track, even temporarily laid upon the land of another, but for the ordinary uses and purposes of the carrier, as the latter's premises, a different situation is presented here. In this case the tracks, while remaining the property of defendant, were constructed for the use and convenience of complainant only. Defendant may, as provided in the agreements, at any time repossess itself of and remove its property, but has reserved no right and does not attempt to use the tracks itself; and in no proper sense could those tracks be regarded as its "premises."

The meaning to be ascribed to the phrase in question is illustrated by other provisions of the same rules. For example, carload freight, other than explosives or other dangerous articles, "held in cars for

delivery and subsequently unloaded *in or on this company's premises* is subject to demurrage rules while in cars and to these storage rules after it is unloaded." Again, respecting dangerous explosives and other commodities, specified periods of time are allowed "for removal of freight from car *or this company's premises*," etc. These and further similar provisions not only set aside the car equipment, but indicate that the "premises" in contemplation are those in respect of which defendant has a right of property or user—not those of a shipper to which defendant has no right of access.

The particular facts and circumstances considered, we are of opinion, and find, that the storage charges assailed were not legally assessable on the shipments in question while held within the limits of complainant's plant. It becomes unnecessary to consider the remaining allegations of the complainant, and of the merits of a charge for storage of dangerous articles in carriers' cars, wherever held, we express no opinion. It appears that upon at least one shipment the storage charge was collected, and it should be promptly refunded, with interest. If this is not done, the matter may again be brought to our attention for appropriate action.

An order dismissing the complaint will be entered.

51 I. C. C.

No. 8586.

GULF REFINING COMPANY OF LOUISIANA

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

Submitted April 20, 1916. Decided August 3, 1918.

Rates on gasoline and other volatile petroleum oils in carloads from Mobile, Ala., to Chattanooga and Knoxville, Tenn., and from Gretna, La., to Mobile and Gadsden, Ala., and Knoxville, found to have been unreasonable. Reparation awarded.

C. B. Ellis for complainant.

J. M. Dewberry for Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in marketing petroleum and its products, with an office at Pittsburgh, Pa. By complaint seasonably filed it alleges that the rates charged by defendants on certain carloads of petroleum and its products, including gasoline in tank cars, gasoline, kerosene, and naphtha in iron barrels or drums, and lubricating oil in barrels and cases, shipped from New Orleans, La., to Mobile and Gadsden, Ala., and Knoxville, Tenn., and from Mobile to Knoxville and Chattanooga, Tenn., between July 25 and December 16, 1913, inclusive, were unreasonable. Reparation is asked. Rates are stated in cents per 100 pounds.

The shipments from Mobile, consisting of numerous tank-car loads of gasoline, moved over the lines of all of the defendants to Chattanooga or over the Louisville & Nashville to Knoxville. The other shipments, consisting of numerous tank-car loads of gasoline and carloads of gasoline, naphtha, and other volatile petroleum oils in barrels, drums, or cases, moved from New Orleans over the Louisville & Nashville to Mobile, Gadsden, or Knoxville. They originated at Gretna, La., within the switching limits of New Orleans, but were billed from New Orleans, the charges of the switching carrier being absorbed by the line-haul carrier under appropriate tariff provisions still in effect. Charges were collected on the basis of the fifth-class rates legally applicable under the governing southern classification: 47 cents to Chattanooga and 52 cents

to Knoxville, from Mobile; 15 cents to Mobile, 48 cents to Gadsden, and 57 cents to Knoxville, from New Orleans.

Prior to July 24, 1913, the following carload commodity rates applied over the routes of movement on the general list of petroleum and its products, including the oils in question: 30.5 cents to Chattanooga and 35.5 cents to Knoxville, from Mobile; 12 cents to Mobile, 33.5 cents to Gadsden, and 38.5 cents to Knoxville, from New Orleans. The tariff in which the above rates were published also named carload commodity rates on this traffic between various southeastern points. Practically all of the southeastern carriers were parties to this tariff, and the lines of certain of these carriers, other than the Louisville & Nashville, formed available but more circuitous through routes from and to the points in question. Effective July 24, 1913, it was provided by tariff exception that the rates named in the commodity tariff would not apply in connection with the Louisville & Nashville on shipments of gasoline and other volatile oils except to certain destinations not including those here concerned. To destinations local to its line, the Louisville & Nashville continued to transport these commodities at commodity rates. The application of the commodity rates was not restricted by other carriers parties to the tariff and those carriers continued to apply throughout this territory commodity rates on the general list of petroleum and its products. Effective March 4, 1916, the restrictions mentioned were removed, thus reestablishing the above-named commodity rates over the routes of movement. Complainant seeks reparation on the basis of these commodity rates. The present rates are not assailed. Representative ton-mile earnings under the rates charged were 19.7 mills from Mobile to Chattanooga, 476 miles; 16.3 mills from New Orleans to Knoxville, 701 miles.

We find that the rates charged on the shipments from Mobile were unreasonable to the extent that they exceeded 30.5 cents per 100 pounds to Chattanooga and 35.5 cents per 100 pounds to Knoxville; that the rates charged on the shipments from Gretna were unreasonable to the extent that they exceeded 12 cents per 100 pounds to Mobile, 33.5 cents per 100 pounds to Gadsden, and 38.5 cents per 100 pounds to Knoxville. We further find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined upon this record, and complainant should prepare a statement showing the details of the shipments in accordance with rule V of the

Rules of Practice, also specifying the date on which the charges were paid, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

No. 8384.

LAMB-FISH LUMBER COMPANY

v.

YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY
ET AL.

Submitted February 25, 1918. Decided August 3, 1918.

Certain carload shipments of gum and oak lumber from Charleston, Miss., to Chicago, Ill., found to have been misrouted. Reparation awarded.

George Land for complainant.

H. D. Minor for defendants.

SUPPLEMENTAL REPORT OF THE COMMISSION.

BY THE COMMISSION:

In our original report herein, 42 I. C. C. 470, we found that the rates charged on certain carloads of gum and oak lumber shipped by complainant, a corporation, from Charleston, Miss., a local point on the Yazoo & Mississippi Valley Railroad, to Chicago, Ill., for delivery by the Pittsburgh, Cincinnati, Chicago & St. Louis Railway, hereinafter called the Panhandle, that were so delivered within two years prior to July 27, 1915, were illegal to the extent that they exceeded 16 cents per 100 pounds on gum lumber and 17 cents per 100 pounds on oak and other lumber taking the same rates. Reparation was found due on such shipments, but no order was entered, as the record was insufficient. The customary statement from complainant relative to the shipments and its verification by the defendants was required. The defendants refused to verify that portion of the statement submitted by the complainant covering shipments which were not actually delivered by the Panhandle, whereupon the complainant filed a petition for a rehearing, alleging that numerous shipments upon which the higher rates were charged and on

which reparation was sought were misrouted by the defendants and that the question of reparation on such shipments was before us in the former proceeding but not determined. This petition was granted, and at the rehearing complainant exhibited bills of lading and freight bills and subsequently filed a statement showing that 6 shipments were not routed by the shippers; 6 were routed "via P., C., C. & St. L. Ry., C., B. & Q. delivery"; 1 was routed "via P., C., C. & St. L. Ry., C., M. & St. P. Ry. delivery"; and 191 were routed "via P., C., C. & St. L. Ry." All the shipments were delivered by the Yazoo & Mississippi Valley to the Illinois Central Railroad and by the latter transported to Chicago except eight or nine, which were turned over to the Panhandle.

The defendants take issue with the findings in our former report that the lower rates were the legal rates, but the case was reopened solely "upon the question of reparation due to the alleged misrouting of certain shipments of gum and oak lumber from Charleston, Miss., to Chicago, Ill." The defendants also argued that complainant's petition was filed too late, under rule XV of our Rules of Practice, but as no order has been issued this contention is not well founded. They further urged that as to shipments intended for delivery on the numerous lines serving Chicago other than the Panhandle the higher rates to Chicago shown in the tariff by way of those lines were specific and took precedence over the lower rates by way of the Panhandle which could apply to points on other lines only in connection with the switching and absorption tariffs; and therefore that they were justified in not delivering to the Panhandle shipments which were destined to points at Chicago not reached by that road. We can not agree with this contention.

It appears that a number of the shipments as to which the only routing shown was by way of the Panhandle were intended for delivery at points within the Chicago switching district on other lines, but the actual points of delivery are not shown of record. We will, therefore, confine ourselves to the rate to Chicago, without reference to any charges in addition to the line-haul rate for terminal services at Chicago, which, if legally applicable to the shipments, must be taken into consideration in determining the amount of reparation due under our findings. It is our opinion that if all the shipments routed in connection with the Panhandle had moved as routed the legal rates to Chicago would have been 16 cents per 100 pounds on gum lumber and 17 cents per 100 pounds on oak lumber and other lumber taking the same rates. Shipments which were unrouted by the shipper were entitled to the lowest rates available by any route, which in this case were the rates by way of the Panhandle.

We find that the above-described shipments were misrouted by the Illinois Central Railroad Company; that complainant made the said shipments and paid and bore the charges thereon; that it was damaged by the misrouting to the extent of the difference between the charges paid and those that would have accrued had the shipments moved over the route in connection with the Pittsburgh, Cincinnati, Chicago & St. Louis Railway; and that it is entitled to reparation, with interest, from the Illinois Central Railroad Company. Upon this record we can not determine the exact amount of reparation due, and the complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the date on which the charges were paid, which statement should be submitted to the Illinois Central Railroad Company for verification. Upon receipt of a statement so prepared and verified, we will consider the entry of an order awarding reparation.

51 I. C. C.

No. 8772.
BAINBRIDGE OIL COMPANY
v.
MARIANNA & BLOUNTSTOWN RAILROAD COMPANY
ET AL.

Submitted November 23, 1917. Decided August 3, 1918.

Rates legally applicable on cotton seed, in carloads, from certain points in Florida to Bainbridge, Ga., found unreasonable on rehearing and reparation found due.

Clifford L. Anderson for complainant.

D. Lynch Younger for Atlantic Coast Line Railroad Company.

REPORT OF THE COMMISSION ON REHEARING.

BY THE COMMISSION:

In our original report herein, 44 I. C. C., 660, we found that the combination rates charged for the transportation of 26 carloads of cotton seed from Sneads, Cypress, Marianna, Fairgrounds, and Alliance, Fla., to Bainbridge, Ga., between August 30, 1911, and February 16, 1912, inclusive, were unreasonable to the extent that the components to River Junction, Fla., exceeded the class N rates in effect before and the commodity rates established after the shipments moved. The through rates were assailed, but at the time of the hearing it was assumed that a class M rate of \$1.21 per net ton applied from River Junction to Bainbridge, and, as charges were ultimately collected on that basis and were satisfactory to complainant, its attack was directed specifically against the components to River Junction. We found that the component legally applicable beyond River Junction was the class D rate of 7½ cents per 100 pounds, and that each of the shipments had been undercharged, but did not pass upon the reasonableness of the legally applicable component. Upon petition of complainant the case was reopened for further hearing with respect to the reasonableness of the 7½-cent component of the through rate.

The Atlantic Coast Line Railroad Company originally collected charges for the movement from River Junction to Bainbridge on basis of the class D rate of 7½ cents per 100 pounds, but subsequently refunded charges down to the basis of the class M rate of \$1.21 per net ton. The latter rate applied on—

Fertilizers, any quantity, embracing * * * cotton seed * * * in bags, bales, barrels, or casks, or in bulk, for fertilizer purposes, so certified on bill of lading or shipping receipt, value limited to \$10 per ton and expressed in bill of lading.

The shipments were not limited, as required under the class M rates, to \$10 per ton in value or for fertilizer purposes. On November 1, 1912, after the shipments moved, the Atlantic Coast Line established the class M rating on "cotton seed, * * * carloads," without limitation as to use or value, and this rating is still in effect. It was explained that the Atlantic Coast Line intended to apply the class M rates on all carload shipments of cotton seed regardless of its use.

The complainant contends that the rates cited in comparison to show that the rates from the points of origin to River Junction, over the Louisville & Nashville Railroad, were unreasonable, apply with equal force to show that the 7½-cent rate from River Junction to destination, over the Atlantic Coast Line, was unreasonable, transportation conditions being substantially similar. Comparative rates are shown in our original report and need not be repeated. An intrastate rate of 6 cents per 100 pounds over the Louisville & Nashville from Holts, Fla., to Pensacola, Fla., 39 miles, is emphasized. The distance from River Junction to Bainbridge is also 39 miles. The components found reasonable to River Junction ranged from 3 to 6 cents per 100 pounds for distances of from 5 to 27 miles. The defendants introduced no additional evidence.

Upon the facts presented we are of the opinion and find that the through rates legally applicable were unreasonable to the extent that the components to River Junction exceeded the class N rates in effect before and the commodity rates established after the shipments moved and further to the extent that the component from River Junction to Bainbridge exceeded the class M rate of \$1.21 per net ton. We further find that the complainant made the shipments as described in our original report; that it paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record, and complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the date on which the charges were paid, which statement should be submitted to the defendant for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation. Collection of the outstanding undercharges should be waived.

No. 9981.

GEORGE C. HOLT AND BENJAMIN B. ODELL, AS RECEIVERS OF AETNA EXPLOSIVES COMPANY,

v.

ALABAMA GREAT SOUTHERN RAILROAD COMPANY
ET AL.

Submitted June 20, 1918. Decided August 10, 1918.

Charges assessed on certain shipments of sulphuric acid, in tank cars, from points of production in the southeast to Emporium, Sinnemahoning, Mount Union, and Oakdale, Pa., found to have been unreasonable. Reparation awarded.

Winthrop & Stimson and *George O. Reynolds* for complainants.
M. S. Connelly for Pennsylvania lines west of Pittsburgh.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

The complaint in this proceeding, filed November 24, 1917, by the receivers of the Aetna Explosives Company, a corporation engaged in the manufacture of explosives, alleges that unjust and unreasonable rates were charged on certain shipments of sulphuric acid, in tank cars, forwarded between November, 1915, and March, 1916, from points of production in Alabama, Georgia, Mississippi, and South Carolina to Emporium, Sinnemahoning, Mount Union, and Oakdale, Pa. Reparation is asked, based on rates which were established shortly after the shipments had moved.

Sulphuric acid is produced at various points in the southeast, where prior to the European war its principal use was in the manufacture of fertilizer. When the war broke out and the supply of acid manufactured north of the Potomac and Ohio rivers became inadequate to meet the increased demand by manufacturers of munitions, the Aetna Explosives Company contracted to purchase a large quantity in Atlanta, Ga., and other points in the southeast at a price of \$22 per net ton f. o. b. point of shipment. At that time there were no through commodity rates from the southern producing points to points in central freight association and trunk line territories. The through sixth-class rates were applicable on shipments moving via the Virginia cities gateways, and the sixth-class

rates to the Ohio River, and proportional rates beyond on traffic routed via Ohio River crossings. The rates applicable from the Ohio River to Emporium, Sinnemahoning, and Mount Union, points in trunk line territory, were the fifth-class proportional rates from Cincinnati, Ohio, and to Oakdale, a point in central freight association territory, 90 per cent of the fifth-class proportional rate from Cincinnati.

The class rate adjustment was unsatisfactory to the complainants, and application was therefore made for the establishment of joint through commodity rates on a substantially lower basis. Accordingly, a distance scale was constructed over the southern lines based on the rates prescribed in *International Agricultural Corporation v. L. & N. R. R. Co.*, 22 I. C. C., 488, for the movement of sulphuric acid from Copper Hill, Tenn., to southeastern points, and effective January 10, 1916, and March 2, 1916, through rates were published predicated on this distance scale to the Virginia cities or Ohio River crossings plus the northern lines' sixth-class specifics from Richmond, Va., or fifth-class proportional rates from Cincinnati. The combination which produced the lowest rate was made applicable via either the Virginia cities or Cincinnati.

Before these commodity rates became effective, a number of shipments were made. There seems to have been much uncertainty on the part of the carriers as to what rates were properly applicable, as in many instances different rates were charged for the movement between the same points over the same route. Frequently the rates charged exceeded the tariff rates then in force. The following table, taken principally from exhibits filed by the complainants, shows the distances over the routes of movement, the maximum and minimum rates charged, the tariff rates then in effect, those subsequently established, and rates based on the distance scale of the southern lines extended to include the points of destination.

TO EMPORIUM.

From—	Miles.	Rates charged.	Tariff rate.	Subsequent rate.	Scale rate.
Atlanta, Ga.....	1 080	\$11.00 8.28	\$11.00	\$6.96	\$6.10
Athens, Ga.....	1 933	13.40	11.00	6.90	5.85
Valdosta, Ga.....	1 087	11.46 10.40	10.40	7.60	6.55
Troy, Ala.....	1 223	14.68 13.40	13.40	7.76	7.26
Troy, Ala.....	1 268	17.06 14.68	13.40	7.76	7.45
Roanoke, Ala.....	1 120	13.80	12.60	7.66	6.70
Gulfport, Miss.....	1 340	20.26 11.26	11.26	8.56	7.80
Meridian, Miss.....	1 141	20.26 10.00	9.80	7.76	6.85

TO SINNEMAHONING.

From—	Miles.	Rates charged.	Tariff rate.	Subsequent rate.	Scale rate.
Atlanta, Ga.....	¹ 1,016	\$8.46	\$11.00	\$7.10	\$6.20
Montgomery, Ala.....	² 1,214	13.60	10.20	8.00	7.20

TO MOUNT UNION.

Meridian, Miss.....	¹ 1,103	\$20.26	\$9.20	\$8.60	\$8.65
Hattiesburg, Miss.....	¹ 987	20.26	15.16	9.06	6.10

TO OAKDALE.

Atlanta, Ga.....	¹ 773	\$7.20	\$7.20	\$5.70	\$5.00
Hattiesburg, Miss.....	¹ 1,026	13.00	13.00	6.90	6.25
Talladega, Ala.....	¹ 971	11.00			
		12.80	11.40	5.90	6.10
		11.60			
Charleston, S. C.....	² 992	9.20	8.18	6.10	6.10

¹ Via Ohio River crossings.

² Via Virginia cities.

The complainants do not ask the establishment of or claim reparation upon the rates based on the southern lines' distance scales. It is their contention, however, that the scale rates may properly be used to measure the unreasonableness of the rates which were charged and the reasonableness of the rates subsequently established. It will be observed that in almost every instance the published through rates are higher than the rates produced by the application of the distance scale from point of origin to destination.

Joint rates on sulphuric acid from New Orleans, La., to the destinations herein involved were considered by the Commission in *Sulphuric Acid from New Orleans, La.*, 42 I. C. C., 200, decided December 5, 1916. The rates then in effect from New Orleans were the fifth-class rates governed by the official classification, although in the southern classification sulphuric acid is rated sixth class. The carriers respondent in that proceeding undertook to revise the rates from New Orleans by publishing through commodity rates based on the southern lines' distance scale to the Virginia cities or the Ohio River and the sixth-class specifics or fifth-class proportional rates beyond. Under this revision the rates to Emporium, Sinnemahoning, and Mount Union would have been increased. These increased rates, however, were found not to have been justified. Under the proposed basis the rate to Oakdale was reduced from \$9.40 per net ton to \$7.30, which the carriers were authorized to publish. The rates then in effect from New Orleans, which are also the present rates, the proposed rates,

and the distances to the four points involved in this proceeding are shown for comparative purposes in the following table:

From New Orleans to—	Miles.	Rates in effect.	Rates proposed.
Emporium.....	1,339	\$8.00	\$8.56
Sinnemahoning.....	1,323	8.00	9.30
Mount Union.....	1,306	8.00	9.10
Oakdale.....	1,132	9.40	7.30

Sulphuric acid does not move by water, and therefore a comparison can properly be made between the rates from New Orleans and those from other points of origin in the south.

The rates charged for the movement of acid from the points of origin involved in this case were materially higher than the rates found to be unreasonable for the longer hauls from New Orleans, and no effort was made to justify them. The southern lines were not represented at the hearing and the evidence offered on behalf of the northern lines related particularly to the method of apportioning the revenue north and south of the gateways.

The Commission should find from the record that the rates in issue were unreasonable, as alleged, and when details of the shipments have been prepared by the complainants and verified by the defendants, an order should be entered awarding reparation to the extent of the difference between the charges paid and the charges that would have accrued under the rates which were made effective January 10, 1916, or March 2, 1916. No order for the future is necessary.

ANDERSON, Commissioner:

The foregoing is the report proposed by the examiner, which was served upon the parties. No exceptions thereto were filed. Upon consideration of the record we adopt the report and findings proposed by the examiner as the report and findings of the Commission.

51 I. C. C.

No. 9801.

LOVELAND & HINYAN COMPANY

v.

DELAWARE & HUDSON COMPANY ET AL.

Submitted March 7, 1918. Decided August 10, 1918.

Rates for the transportation of carload shipments of potatoes from certain points in Iowa to Pittsburgh, Scranton, and Wilkes-Barre, Pa., in October, 1915, found to have been unreasonable, and reparation awarded.

Hall, Gillard & Temple for complainant.

A. F. Cleveland and *R. G. Brown* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

HALL, Commissioner:

Complainant seeks reparation on 18 carload shipments of potatoes which moved in October, 1915, from points in Iowa to Pittsburgh, Scranton, and Wilkes-Barre, Pa., alleging in its complaint filed August 3, 1917, that the rates charged, ranging from 33 to 45.5 cents per 100 pounds, were unreasonable, unjustly discriminatory, and unduly prejudicial. These were combinations of the class C rates, governed by the western classification, to the Mississippi River, and the fifth-class rates, governed by the official classification, beyond. Rates are stated in cents per 100 pounds. Reparation is asked to the basis of 26.3 on the shipments to Pittsburgh, and 36.5 on those to Scranton and Wilkes-Barre, applying from St. Paul. The latter are commodity rates, made with reference to rates from points in Wisconsin, and were established from these points April 1, 1917. Informal complaint was filed with the Commission in August, 1916.

The points of origin, Berlin and Gladbrook on the Chicago Great Western; Dike and Stout on the Chicago & North Western; and Holland, Wellsburg, and Grundy Center on the Chicago, Rock Island & Pacific, are from 200 to 249 miles south of St. Paul and in the same general locality, Berlin and Gladbrook being in Tama county and the other points in Grundy county, which adjoins. They are all adjoining stations on the respective lines. Gladbrook is also on the North Western.

These three defendants operate lines south and east from St. Paul to Chicago through this part of Iowa but none of the points of origin

is directly between St. Paul and Chicago over used routes as determined by waybilling instructions. The routing of traffic from St. Paul through Berlin and Gladbrook by the Chicago Great Western would require a useless haul to those stations from Oelwein and then back to Oelwein, aggregating 103 miles and 115 miles, respectively. The St. Paul route of the Rock Island is through Manly, Waterloo, and Vinton, and not through Manly, Iowa Falls, and Vinton, between the latter two of which are Wellsburg, Holland, and Grundy Center. The latter route is 25 miles longer than the other. The route of the North Western is not south through Blue Earth and Belle Plaine, between which are Dike and Stout, but southeast through Eau Claire and Madison, or east through Eau Claire, Wyeville, and Milwaukee. The defendants therefore contend that an intermediate clause in the tariff then effective, on which some reliance is placed by the complainant, did not apply. Under this clause the rate from a point not indexed in the tariff and between two points from which rates were published, was the rate from the next more distant station. The complainant bases its contention in this respect upon the fact that the tariff did not provide that the point must be "directly" between the other points. Examination of the tariff discloses that application of the rates from St. Paul was not thereby limited to the shorter routes indicated in the waybilling instructions.

From correspondence in the informal proceedings it appears that the complainant sought, shortly before these shipments moved, to have the St. Paul basis established from these points, under authority of rule 77 of our tariff circular, which provides for the establishment of rates from intermediate points not higher than from farther distant points, upon one day's notice. The defendants state that such a request could not have been granted because, first, the points were not directly intermediate over used routes, and, second, the rule 77 clause, while in the tariff naming rates to central freight association territory, was not in the tariff naming rates to trunk line territory, which embraces the points of destination.

The following is a comparison of distances over the direct routes from St. Paul with those via the routes of movement from these points to Chicago:

C. G. W.	Miles.	C., R. I. & P.	Miles.	C. & N. W.	Miles.
St. Paul-----	425	St. Paul-----	512	St. Paul-----	396
Berlin -----	297	Wellsburg-----	336	Dike-----	301
Gladbrook-----	303	Holland-----	329	Stout -----	307
		Grundy Center -	326	Gladbrook-----	288

The rates to Chicago from Lake Crystal, Minn., on the North Western, 96 miles south of St. Paul, 153 miles north of Dike, and 146 miles north of Stout, are 2 cents higher than from St. Paul. The route from Lake Crystal to Chicago is north, east, and southeast

through Mankato, Winona, Wyeville, and Milwaukee, and not south through Dike and Stout. The distance from Lake Crystal to Chicago by way of Wyeville is 460 miles.

It appears that from January, 1899, to February, 1913, the St. Paul basis of rates was applicable from Berlin and Gladbrook, on the Chicago Great Western, to points in central freight association territory, and that this basis was canceled because for a long time there had been no use made of the rates. Whether the St. Paul basis also applied from Berlin and Gladbrook to points in trunk line territory during the period noted does not clearly appear from the record. For complainant it was testified that, due principally to the absence of suitable through rates, Iowa potatoes were not shipped east, although potatoes were and are grown in substantial quantities in this part of Iowa and shipped in other directions, in competition with St. Paul.

For defendants it was testified that the St. Paul basis was subsequently established from all of these points because their attention had been called to the demand for the rates, and because certain of the western lines, including the Minneapolis & St. Louis, which reaches the east through the Peoria gateway, proposed to maintain rates from their intermediate Iowa territory no higher than from St. Paul. The defendants further state that they would probably have reduced these rates sooner had they been requested. The Minneapolis & St. Louis does not serve the points here considered, but does serve Iowa points to the west of them.

We are of the opinion and find that the rates charged were unreasonable to the extent that they exceeded the subsequently established rates of 26.3 cents to Pittsburgh and 36.5 cents to Scranton and Wilkes-Barre; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rates herein found reasonable and that it is entitled to reparation, with interest. Complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the date on which the charges were paid, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

No. 9421.

WILLIAM CAMERON & COMPANY, INCORPORATED,

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted May 16, 1917. Decided October 2, 1918.

Rate on common window glass, in carloads, from Okmulgee, Okla., to Waco, Tex., found to have been unreasonable. Reparation awarded.

G. H. Zimmerman, H. D. Driscoll, and E. R. Fulton, for complainant.

Gentry Waldo for Houston & Texas Central Railroad Company and Texas & Pacific Railway Company; *R. R. Lethem* for St. Louis-San Francisco Railway Company; *J. F. Garvin* for Missouri, Kansas & Texas Railway Company, and Missouri, Kansas & Texas Railway Company of Texas, and its receiver; *L. M. Hogsett* for International & Great Northern Railway Company, and its receiver; and *F. R. Dalzell*, for Atchinson, Topeka & Santa Fe Railroad Company, and Gulf, Colorado & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant, a corporation engaged in buying and selling common window glass at Waco, Tex., alleges, by complaint seasonably filed, that the rate of 35 cents per 100 pounds charged on numerous carloads of common window glass shipped from Okmulgee, Okla., to Waco, on and after December 12, 1915, was unreasonable, unjustly discriminatory, and unduly prejudicial. It asks reparation and the establishment of a reasonable rate. Rates are stated in cents per 100 pounds and are those in effect prior to June 25, 1918.

The shipments moved over the lines of defendants and charges were assessed at the rate of 35 cents, as alleged. On July 24, 1912, the carload rate on window glass from and to these points had been reduced from 62 to 35 cents, and, on May 2, 1917, subsequent to the hearing, was further reduced to 30 cents, the minimum remaining at 36,000 pounds. The short-line distance from Okmulgee to Waco is 334 miles, but by the most direct route over which the rate applies, viz, the St. Louis-San Francisco Railway to Denison, Tex., and the Missouri, Kansas & Texas Railway beyond, the distance is 352 miles.

The latter is conceded by complainant to be "the logical mileage." Waco is served by various other lines in connection with the St. Louis-San Francisco and the Okmulgee & Northern Railway on traffic originating at Okmulgee.

The complainant contends that it is unduly prejudiced by reason of low rates on glass from Okmulgee to certain points in Missouri, Iowa, Illinois, and Wisconsin, averaging 23.1 cents for 611 miles, or 7.5 mills per ton-mile, in its efforts to compete in the intermediate territory, and even in Texas, with the favored manufacturers of glazed sash and doors located at these points. Its witness testified that in Louisiana and Arkansas the prices quoted by the favored manufacturers at St. Louis, Mo., Clinton, Iowa, and Chicago, Ill., control the markets. The complainant urges that it is entitled to the same rate from Okmulgee to Waco as applies to Clinton, which is 22 cents for a distance of 646 miles.

For the defendants it was testified that the cited rates are not properly comparable, as they were put in to enable Okmulgee to market its common window glass in competition with Columbus, Ohio, and Hartford City, Ind. From those glass-producing points to the points named by the complainant, with one exception, the rates are uniformly lower and the distances shorter than from Okmulgee. The exception is Kansas City, Mo., with a rate from Okmulgee of 20 cents for a distance of 293 miles, and the fifth-class rates of 43 and 41 cents from Columbus and Hartford City, for distances of 709 and 622 miles, respectively.

The complainant compares the rate assailed with the rate of 24 cents on glass from Shreveport, La., to Corpus Christi, San Antonio, San Angelo, Big Spring, and Quanah, in Texas common-point territory, for an average distance of 443 miles. But the points selected are points of maximum distance, to which the Shreveport rate applies. To Waco, approximately the central point, the distance is 238 miles. The complainant also cites the rate of 17.5 cents on sash, glazed or unglazed, prescribed in *Oklahoma Traffic Asso. v. A. & S. Ry Co.*, 36 I. C. C., 329, for application from Oklahoma City, Okla., and Okmulgee to all points in the Dallas-Fort Worth territory, including Waco, and observes that the glass so shipped, which is said to constitute 60 per cent of the weight of an average-sized glazed sash, takes a lower rate than when shipped in straight carloads. This, complainant contends, is not justified from a transportation standpoint, since, it was testified, glass may be shipped in any type or condition of car without injury, while glazed sash requires better equipment and is more liable to damage. At the same time it is conceded that damage to either commodity is rare, and that the movement of glazed sash from Okmulgee to Waco has practically ceased by reason of the present competition between the two points. In the case above cited

we observed that throughout the southwest window glass generally takes higher rates than sash.

The 30-cent rate applies from Okmulgee and Sapulpa, Okla., and Fredonia, Coffeyville, Caney, Augusta, and Independence, Kans., all window-glass producing points, to all points in the Dallas-Fort Worth group, with the exception that from Okmulgee and Sapulpa to Dallas, Fort Worth, and intermediate points the rate is 25 cents. The defendants cite 15 points in the 30-cent group, but including none nearer than Waco, to which the average distances are approximately 428 miles from Okmulgee, 445 miles from Sapulpa, and upward of 500 miles from the Kansas points. The rate sought by the complainant would be 3 cents lower than that in effect to Dallas and Fort Worth, 252 and 266 miles, respectively, from Okmulgee. To Waco the 30-cent rate yields 1.7 cents per ton-mile as against 2 cents under the 24-cent rate from Shreveport.

Upon all the facts of record, and particularly considering the distances for which the 30-cent rate is carried from the Kansas glass-producing points, we are of the opinion and find that the rate assailed was unreasonable to the extent that it exceeded 25 cents per 100 pounds. We further find that the complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found reasonable, and that it is entitled to reparation with interest. The exact amount of reparation due can not be determined upon the present record, and complainant should prepare a statement showing the details of these shipments in accordance with rule V of the Rules of Practice, also specifying the date on which the charges were paid, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified, we will consider the entry of an order awarding reparation. The carriers concerned are now under federal control and an opportunity was afforded to amend the complaint by making the Director General of Railroads a party defendant. As no amendment was filed no finding or order for the future can be made effective in the present state of the pleadings.

No. 9586.

SUNDERLAND BROTHERS COMPANY

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY
ET AL.

Submitted July 19, 1917. Decided August 10, 1918.

Rates on salt, in carloads, from Hutchinson, Kans., to certain points in Nebraska not shown to have been or to be unreasonable or otherwise in violation of the act. Complaint dismissed.

H. S. Colvin for complainant.

F. Montmorency for Chicago, Burlington & Quincy Railroad Company.

W. H. Jones for Chicago & North Western Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

By DIVISION 3:

Complainant is a corporation dealing in salt and other commodities at Omaha, Nebr. By complaint, filed March 27, 1917, it alleges that defendants' rates on certain carloads of salt shipped from Hutchinson, Kans., to various points in Nebraska between October 19, 1914, and October 9, 1916, were unreasonable to the extent that they exceeded the aggregates of the intermediate rates. It asks reparation and the establishment of reasonable rates for the future. The claim was filed with the Commission informally May 26, 1916. Rates are stated in cents per 100 pounds.

The following statement shows the details of the shipments, together with the combinations of intermediate rates claimed:

Destination.	Carloads.	Routes.	Rates charged.	Combination rates claimed.
			Cents.	Cents.
Beemer.....	3	C., R. I. & P. Ry., Lincoln, Nebr.; C. & N. W. Ry.	21½	21
Clarkson.....	2	.....do.....	21½	21
Creston.....	1	.....do.....	23	21
Do.....	1	C., R. I. & P. Ry.; C. & N. W. Ry.....	23	21
Dodge.....	1	.....do.....	21½	21
Hooper.....	1	C., R. I. & P. Ry., St. Joseph, Mo.; C., B. & Q. R. R., Fremont, Nebr.; C. & N. W. Ry.	24	20
Leigh.....	2	C., R. I. & P. Ry., Lincoln, Nebr.; C. & N. W. Ry.	22	21
Lindsay.....	1	.....do.....	24	22
Mullen.....	1	C., R. I. & P. Ry., St. Joseph, Mo.; C., B. & Q. R. R.	37½	35
Newmans Grove...	11	C., R. I. & P. Ry., Lincoln, Nebr.; C. & N. W. Ry.	25	23
Plainview.....	2	.....do.....	23½	23
Snyder.....	1	.....do.....	21½	20
Stanton.....	2	.....do.....	23½	21
West Point.....	1	.....do.....	21½	21

The rates applied were joint commodity rates, except on the shipment to Hooper, which was diverted by complainant over the route traversed and to which a combination rate of 24 cents, composed of specific commodity rates of 15 cents to Fremont and 9 cents beyond, was properly applied. The combination rate claimed on that shipment is composed of the 15-cent rate to Fremont and a distance commodity rate of 5 cents, in effect at the time shipment moved, beyond. But there was contemporaneously in effect from Fremont to Hooper a specific commodity rate of 9 cents, which would take precedence over the 5-cent rate if the joint rate were canceled.

Salt, in carloads, is rated class C in the western classification, which governs. The claimed combination rates on other than the Hooper shipment are made up of a commodity rate of 12 cents to Lincoln and the following class C rates beyond: To Snyder, 8 cents; to Beemer, Clarkson, Creston, Dodge, Leigh, Stanton, and West Point, 9 cents; to Lindsay, 10 cents; to Newmans Grove and Plainview, 11 cents; and to Mullen, 23 cents. These intermediate rates were in effect at the time the shipments moved, but, while there were no specific commodity rates beyond Lincoln, there were commodity distance rates, which, in combination with the rate of 12 cents to that junction, resulted in rates equal to or higher than those assailed. In the absence of specific through rates or a prescribed method of constructing combination rates, the commodity distance rates would have taken precedence over the class rates in the construction of through rates. The class rates to the points on the Chicago & North Western have since been increased so that in combination with the 12-cent rate to Lincoln they also would result in through rates higher than those assailed.

The Chicago, Burlington & Quincy admitted that the rate charged on the shipment to Mullen was unreasonable to the extent that it exceeded the claimed combination rate and is willing to make reparation. It testified that the carriers have under consideration the adjustment of rates on salt from Kansas producing points to stations in Nebraska so that they will not exceed the lowest combinations on recognized basing points. The admission of the carrier is not conclusive as to the reasonableness of a rate.

We find that the rates assailed are not shown to have been or to be unreasonable or otherwise in violation of the act. An order dismissing the complaint will be entered.

No. 9815.

LITTLE ROCK FREIGHT BUREAU

v.

MISSOURI PACIFIC RAILWAY COMPANY ET AL.

Submitted December 21, 1917. Decided August 10, 1918.

Rate on oak heading, in carloads, from Indianapolis, Ind., to Batesville, Ark., not shown to have been unreasonable, unjustly discriminatory, or unduly prejudicial. Complaint dismissed.

A. R. Bragg for complainant.

Henry G. Herbel for Missouri Pacific Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

This complaint was filed August 6, 1917, by the Merchants' Freight Bureau of Little Rock, Ark., a voluntary association of merchants and manufacturers, on behalf of the Mount Olive Stave Company, one of its members, a corporation engaged in the manufacture of barrel staves and heading, at Batesville, Ark., hereinafter referred to as complainant. It is alleged that unreasonable, unjustly discriminatory, and unduly prejudicial charges were collected by defendants on a carload of oak heading shipped from Indianapolis, Ind., to Batesville, and reparation is asked. Rates are stated in cents per 100 pounds.

The heading was originally shipped from Batesville in March, 1915, to Dupu, Ill., and thence to Indianapolis. The consignee, at the latter point, refused to accept it, and complainant directed its return to Batesville. The return movement was over the Pittsburgh, Cincinnati, Chicago & St. Louis Railroad to East St. Louis, Ill., Terminal Railroad Association of St. Louis to Dupu, and the Missouri Pacific system to Batesville, approximately 564 miles. Charges were collected for this movement at the legally applicable joint class D rate of 28.5 cents provided for lumber and articles taking the same rates. The allegation of unreasonableness rests entirely upon the fact that a commodity rate of 22.5 cents was contemporaneously in effect from Batesville to Indianapolis.

Batesville, a local point on a branch line of the Missouri Pacific Railroad, is in the northeastern section of Arkansas. It is testified,
51 I. C. C.

on behalf of defendants, that because of the volume of lumber originating in Arkansas, and moving east and north, and the keen competition of lumber from west of the Mississippi River with that east and north, a full line of commodity rates has been established on lumber and articles taking the same rates to Mississippi River crossings and points beyond. They stated that as compared with the movement from Arkansas points to central freight association territory the movement in the opposite direction is negligible. It is further stated that, while there is a considerable movement of lumber and articles taking the same rates from Batesville, the shipment in question is the only one within defendants' knowledge which has moved from Indianapolis to Batesville. Defendants contend that the rate assailed was and is not unreasonable in itself and should not be compared with the rate from Batesville to Indianapolis on account of the dissimilarity of conditions.

We have repeatedly held that the mere fact that the rate in one direction exceeded the rate between the same points in the opposite direction does not demonstrate the unreasonableness of the higher rate. *Hull Vehicle Co. v. S. Ry. Co.*, 28 I. C. C., 619; *Parlin & Orendorff Co. v. S. P. Co.*, 42 I. C. C., 29. There is no evidence of unjust discrimination or undue prejudice.

We find that the rate assailed is not shown to have been unreasonable, unjustly discriminatory, or unduly prejudicial. An order dismissing the complaint will be entered.

51 I. C. C.

No. 8572.

W. T. BRUER & SON

v.

NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY
ET AL.

Submitted July 13, 1917. Decided August 10, 1918.

Rates on cedar posts and poles in carloads from Silver Springs, Tenn., to Wilsonville, Palisade, and Hendley, Nebr., found to have been unreasonable and unlawful. Reparation awarded.

Will F. Bruer for complainants.

No appearance for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainants are W. T. Bruer and Will F. Bruer, copartners, engaged in the wholesale purchase and sale of posts, poles, and piling, at Springfield, Mo., under the name of W. T. Bruer & Son, and are the successors in interest of W. T. Bruer and F. F. Bruer, who, at the time the shipments moved, were copartners trading under the same firm name. By complaint, filed January 6, 1916, as amended, they allege that the rates charged by defendants on 10 carloads of cedar poles, posts, and highway piling shipped from Silver Springs, Tenn., to Roseville, Swan Creek, Galesburg, Woodhull, and Oneida, Ill., Wilsonville, Palisade, and Hendley, Nebr., Mapleton, Iowa, and Gregory, S. Dak., between December 16, 1912, and May 31, 1913, both dates inclusive, were unreasonable, unjustly discriminatory, and in violation of the fourth section in that they exceeded the aggregates of the intermediate rates contemporaneously in effect over the routes of movement. Reparation is asked. The claim was presented to the Commission informally March 28, 1914. Rates are stated in cents per 100 pounds.

The route taken by the shipment to Gregory is not established of record. All the other shipments, with a single exception, moved by way of the Nashville, Chattanooga & St. Louis to Paducah, Ky., whence they were handled to destination by the Chicago, Burlington & Quincy Railroad through East St. Louis, Ill. The shipment to Mapleton moved over the Burlington through Des Moines, Iowa, delivery at destination being made by the Chicago & North

Western. Charges aggregating \$1,284.63 were collected on all of the shipments, except the one to Gregory, at joint commodity rates legally applicable. On the excepted shipment charges were collected in the sum of \$155.40 at a rate of 42 cents, the basis for which is not shown. No joint rate was in effect to Gregory. By letter, written subsequent to the hearing, defendants contend that this shipment was undercharged and that the rate legally applicable was a combination commodity rate of 44 cents, composed of 17 cents from Silver Springs to East St. Louis, 10 cents to Omaha, Nebr., and 17 cents beyond. An examination of the tariffs on file with the Commission indicates that at the time the shipment moved the component to East St. Louis was 16.75 cents, so that this shipment was apparently undercharged.

In support of their contentions complainants relied solely upon the allegation that the rates charged exceeded the aggregates of the intermediate rates contemporaneously in effect over the routes of movement.

There was no combination rate to Mapleton lower than the 32-cent rate charged. The following table shows with respect to all the shipments, except those to Mapleton and Gregory, the rates charged and the aggregates of the intermediate rates contemporaneously applicable over the routes of movement:

To—	Joint rates assessed.	Aggregates of intermediate rates.	To—	Joint rates assessed.	Aggregates of intermediate rates.
	Cents.	Cents.		Cents.	Cents.
Roseville.....	25	24.75	Oneida.....	25	24.75
Swan Creek.....	25	24.75	Wilsonville.....	42.8	42.05
Galesburg.....	25	24.75	Palisade.....	45.35	44.6
Woodhull.....	25	24.75	Hendley.....	42.37	41.62

Fourth Section Order No. 340, General No. 6, issued October 10, 1911, and still in effect provided:

That, applying the rule *de minimis*, all carriers be, and they are hereby, authorized, in the making up of through fares or rates on the aggregate of the intermediate fares or rates, to disregard fractions of a cent less than .5, retaining the half cent in the rate when it is even .5, and making the rate in even cents when the fraction is more than .5.

As the aggregates of intermediate rates to Roseville, Swan Creek, Galesburg, Woodhull, and Oneida were 24.75 cents defendants were authorized under the provision quoted to make the joint rates 25 cents. The aggregate of intermediates to Wilsonville was 42.05 cents and defendants were not authorized to make the joint rate in excess of that amount. The aggregates of the intermediates to Palisade

and Hendley were 44.6 and 41.62 respectively and defendants were therefore authorized to make the joint rates to these points 45 cents and 42 cents respectively. None of the fourth section violations existing in connection with the rates to the three points last mentioned was protected by fourth section applications. Subsequent to the movement of these shipments the joint rates were reduced so as not to exceed the aggregates of the intermediate rates. Although there have been changes in the rates since that time the joint rates have not since exceeded and do not now exceed the aggregates of the intermediate rates.

Complainants' predecessors were not parties to the transportation records in connection with all of the shipments in issue, but it was testified that the shipments were made for their account; and that they paid and bore the freight charges and were the real parties in interest.

We find that the rates charged on the shipments to Wilsonville, Palisade, and Hendley were unreasonable and unlawful to the extent they exceeded 42.05 cents per 100 pounds to Wilsonville, 45 cents per 100 pounds to Palisade, and 42 cents per 100 pounds to Hendley; that W. T. Bruer and F. F. Bruer made the said shipments and paid and bore charges thereon, and were damaged to the extent of the difference between the charges paid and those that would have accrued at the rates herein found reasonable; and that complainants are entitled to reparation from the Nashville, Chattanooga & St. Louis Railway and the Chicago, Burlington & Quincy Railroad Company in the sum of \$5.55, with interest. An order will be entered accordingly.

51 I. C. C.

No. 9425.
UNITED SHOE MACHINERY COMPANY
v.
BOSTON & MAINE RAILROAD ET AL.

Submitted June 26, 1917. Decided August 10, 1918.

Charges for ferry-car service from Beverly, Mass., on interstate shipments of shoe machinery and parts, back hauled after transfer through the originating station, not shown to have been unreasonable or otherwise in violation of the act. Complaint dismissed.

Walter B. Farr for complainant.

W. A. Cole for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

By DIVISION 3:

Complainant manufactures shoe machinery and parts at Boston, Mass. By complaint filed December 26, 1916, it alleges that the ferry-car charge of \$2 per car demanded by the Boston & Maine Railroad, hereinafter called the defendant, for the transportation of numerous less-than-carload shipments of shoe machinery and parts from Beverly to Salem, Mass., destined to interstate points, on and after September 20, 1913, was and is unreasonable. It prays for reparation and the establishment of a reasonable rule. The claim was presented to the Commission informally March 31, 1915. On April 21, 1915, complainant was advised that the claim could not be adjusted informally, and attention was called to its right to file a formal complaint. Formal complaint was not filed until December 26, 1916, 20 months later, and the claims with respect to shipments moving more than two years prior to December 26, 1916, must be held to have been abandoned.

A ferry car, as the term is here used, is one placed on a private siding at an industry or commercial house, there loaded by a shipper with less-than-carload shipments, and hauled by a carrier to its local freight station or transfer station for the handling and forwarding of its contents. In most sections of the country ferry cars are called trap cars.

Beverly is a local station on defendant's line, about 3 miles north of Salem. On November 1, 1912, defendant established a charge of

20 cents per net ton, minimum \$2 per car, on all ferry cars containing less-than-carload shipments, except that in the following instances, among others, no charge would be made:

When aggregating a weight of 6,000 pounds or more, or when loaded to the visible capacity of the car with light or bulk freight weighing less than 6,000 pounds, but for various consignees or destinations, so loaded by shipper as not to require transfer of any of the shipments before the car would naturally pass through a regularly established transfer station, or require a back haul on any of the shipments if handled at the first transfer station through which the car would naturally pass.

These provisions continue in effect without substantial change, except that on September 17, 1917, the weight of 6,000 pounds was changed to 12,000 pounds, and the following note added:

When the transfer station is not over 4 miles from the station at which the shipment originates, shipments handled at the transfer station and passing through the originating station after transfer will not be considered as back hauled.

Prior to 1913 it was complainant's practice to send ferry cars loaded at its factory direct to the Beverly station. Between September 20, 1913, and February 12, 1915, in accordance with instructions of defendant's agent at Beverly, these cars were sent to Salem, where their contents were sorted and forwarded to destinations. Most of the cars to Salem contained shipments destined to points which necessitated their transportation back through Beverly. No ferry-car charge was demanded on these cars prior to February, 1915, at which time defendant rendered bills for alleged undercharges, the payment of which has been declined pending the decision in this case. After February, 1915, complainant paid the ferry-car charges on cars containing shipments requiring a back haul through Beverly. The present practice is to deliver ferry cars to defendant at Beverly without designating the station at which the shipments contained therein should be sorted. Some of the cars upon which charges are claimed by defendant were apparently not back hauled from Salem through Beverly, but as to these cars defendant concedes that no charge is due. Defendant forwards about three cars of less-than-carload shipments each week from its freight house at Beverly to points north and northeast, to which points Beverly is intermediate from Salem.

Complainant's attack is directed particularly against that portion of the provision quoted which restricts its application to cars "so loaded by shippers as not to * * * require a back haul on any of the shipments if handled at the first transfer station through which the car would naturally pass." Beverly and Salem are treated separately with respect to rates, but for convenience of operation Beverly

is included within the yard limits of Salem. The same engines perform switching at Beverly and Salem. Cars loaded at Beverly ordinarily are hauled to Salem and forwarded in trains from that point, although to a certain territory north and east of Beverly there is a triweekly less-than-carload service direct from Beverly.

On behalf of complainant it is urged that the cars in question were carded to Salem at the request of defendant's agent and for the convenience of defendant, and, further, that the tariff provisions were uncertain and ambiguous in that they failed to designate the transfer stations. It is also contended that the charges assessed were unreasonable.

For the defendant it was testified that the provision covering back hauls was inserted in the tariff to secure loading in the same cars of traffic moving in the same direction in the interest of economical operation; and that transfer stations are established by the operating department and, as they may change from day to day, they are not designated in the tariff.

Complainant knew or should have known that the carding to Salem of cars containing shipments destined ultimately to points north or east of Beverly made necessary a back haul of such shipments through Beverly. The fact that the tariff did not contain a list of the transfer stations did not invalidate the provision respecting the charge in cases of back haul from such stations at which the transfer service was in fact performed. The only evidence offered by complainant to support the charge of unreasonableness consisted of statements that at Worcester and Lowell, Mass., there were no such charges. The conditions and circumstances surrounding ferry-car operation at those points are not shown.

Shippers and carriers alike are charged with knowledge of the provisions of tariffs, and we are without authority to award reparation or authorize the waiver of undercharges solely upon a showing that erroneous advice as to loading was given by defendant's agent. *Merriam, Hall & Co. v. B. & M. R. R.*, 42 I. C. C., 435. This situation is not unlike instances wherein we have refused to award reparation by reason of a misquotation of a rate or tariff provision by a carrier's agent. *Poor Grain Co. v. C., B. & Q. Ry. Co.*, 12 I. C. C., 418.

We find that the charges assailed are not shown to have been unreasonable or otherwise in violation of the act.

An order dismissing the complaint will be entered.

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No. 9392.

POTLATCH LUMBER COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY
COMPANY ET AL.

PORTIONS OF FOURTH SECTION APPLICATION No. 1875.

Submitted April 16, 1917. Decided August 10, 1918.

1. Rates on lumber from Elk River, Idaho, to Bonfield and certain other points in Illinois, not shown to have been or to be unreasonable, unjustly discriminatory, or unduly prejudicial. Shipment from Elk River to Bonfield found to have been overcharged and reparation awarded.
2. Fourth section relief denied.

S. V. Carey for complainant.*O. P. Kellogg* and *A. T. Stewart* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in the manufacture of lumber and forest products at Potlatch, Idaho. By complaint filed December 1, 1916, it is alleged that the rate assessed by defendants on a carload of pine lumber shipped October 10, 1914, from Elk River, Idaho, to Bonfield, Ill., was unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of the long-and-short-haul rule of the fourth section, in that it exceeded the rate contemporaneously maintained to Seneca, Ill., a farther distant point, and that any rates in excess of 52 cents per 100 pounds on lumber from Elk River to points in the state of Illinois were and are unreasonable, unjustly discriminatory, and unduly prejudicial. Reparation and the establishment of reasonable rates are asked. The claim was presented to the Commission informally August 27, 1915. Those portions of Fourth Section Application No. 1875 of W. H. Hosmer, agent, by which the carriers named as parties thereto seek authority to continue to charge for the transportation of pine lumber, in carloads, from Elk River to Seneca rates which are lower than the rates contemporaneously maintained on like traffic to Bonfield and from and to other intermediate points were heard with this case. Rates are stated in cents per 100 pounds.

Bonfield is on the Cleveland, Cincinnati, Chicago & St. Louis Railway, hereinafter called the Big Four, between Kankakee and Seneca. The shipment weighed 48,000 pounds, and moved over the Chicago, Milwaukee & St. Paul Railway, hereinafter called the Milwaukee, to Chicago, New York Central Railroad to Kankakee, and the Big Four to Bonfield; 1,996 miles. Charges were collected in the sum of \$269.76. A combination rate of 55 cents, composed of 42 cents to St. Paul, Minn., and 13 cents beyond, was legally applicable, so that the shipment was overcharged \$5.76. A rate of 52 cents contemporaneously applied and applies on lumber from Elk River to Seneca, to which Bonfield is intermediate over the route of movement, and to Kankakee, Chicago, Ill., and Schneider, Ind. The departure from the rule of the fourth section was protected by the application which was heard with this case. The rates from Elk River to Bonfield and Seneca on numerous articles manufactured from lumber are the same, 57 cents, and complainant contends therefore that the rate on lumber from Elk River should not be higher to Bonfield than to Seneca. An exhibit offered in evidence by complainant shows, among others, a rate of 55 cents on lumber from Elk River to Wauponsee, Ill., a point on the Big Four between Bonfield and Seneca, and to Exline and Edgetown, Ill., points between Bonfield and Schneider.

Complainant seeks primarily joint rates not in excess of 52 cents on lumber from Elk River to all points within the state of Illinois. Elk River is slightly southeast of Spokane, Wash., in what is known as the inland empire. The greater part of the state of Illinois is included within central freight association territory. The history of the rate situation is fully reviewed in our report in *Western Pine Mfrs. Assn. v. C., I. & W. R. R. Co.*, 46 I. C. C., 650, and need not be discussed here. In that case, in which it was alleged that the rates on lumber from Spokane and points in the inland empire to destinations in central freight association territory were unreasonable, unjustly discriminatory, and unduly prejudicial, we found that rates, among others, of 61.5 and 65.7 cents on lumber from Spokane to Detroit, Mich., and Pittsburgh, Pa., respectively, were not shown to have been unreasonable. These rates for distances of 2,155 and 2,352 miles earned 5.7 and 5.58 mills per ton-mile, respectively. The rate applicable on the shipment in issue yielded 5.5 mills per ton-mile and 13.2 cents per car-mile.

Complainant points out that transportation conditions have changed since the establishment of the present rates; that the Milwaukee has extended its line from Chicago through the inland empire territory, and several other railroad systems now extend from Chicago through the same territory; and that it needs an expanding market for its products but is unable to make shipments to points

within the state of Illinois where the rate exceeds 52 cents, on account of lower rates from competing lumber producing points southwest and southeast of Illinois. It also contends that while the class and commodity rates from points in the inland empire to Illinois points have been reduced since the establishment of the rates assailed, the rates on lumber have been increased; and that lumber loads heavily, moves regularly throughout the year, requires no special equipment or service, and occasions relatively few claims for loss or damage in transit. These contentions were considered in *Western Pine Mfrs. Asso., supra*, and there appears to be no reason for a different finding in this case.

We find that the rates assailed are not shown to have been or to be unreasonable, unjustly discriminatory, or unduly prejudicial. We further find that complainant was overcharged on the shipment in issue to the extent of \$5.76; that it made the shipment as described and paid and bore the charges thereon; that it was damaged to the extent of the overcharge; and that it is entitled to reparation in the sum of \$5.76, with interest. No effort was made by the carriers to justify the fourth section departures, and the relief asked for will be denied.

Appropriate orders will be entered.

No. 7969.

NATIONAL POULTRY, BUTTER & EGG ASSOCIATION
v.
BALTIMORE & OHIO SOUTHWESTERN RAILROAD COM-
PANY ET AL

Submitted June 8, 1918. Decided August 3, 1918.

Upon rehearing class rates for the transportation in official classification territory of dressed poultry, butter, eggs, and cheese, in any quantity, found not to have been sufficiently high to include refrigeration during the period from March 20, 1915, to June 1, 1917, when an extra charge for service was made. Finding in original report, 43 I. C. C., 392, that the class rates plus the separate refrigeration charge for the combined services of line haul and refrigeration during the period mentioned had not been justified accordingly reversed, and claims for reparation in the amount of the icing charge on shipments that moved during that period denied.

M. S. Hartman for National Poultry, Butter, & Egg Association and other complainants; *Barry Gilbert* for National Poultry, Butter, & Egg Association; *R. D. Rynder* for Swift & Company; *Harry Eugene Kelly* for Live Poultry and Dairy Shippers Traffic Association and other complainants; *Luther M. Walter* for Morris & Company; *H. C. Barlow* for Chicago Association of Commerce; *W. R. Broome* and *R. R. Hargis* for Wilson & Company; *H. K. Crafts* for Armour & Company and Friedman Manufacturing Company; *C. E. Childe* for Hanford Produce Company; *H. C. Lust* for Indianapolis Chamber of Commerce; *Martin Van Persyn* for Wholesale Grocers Exchange of Chicago and Sprague, Warner & Company; *John Andrew Ronan* for George Ehrat & Company and R. Gerber & Company; *W. B. Quarton* for Iowa State Dairy Association, Iowa Buttermakers Association, and National Creamery & Buttermakers Association; *E. H. Hogueland* for Kansas Egg Shippers' Association and Topeka Traffic Association; *H. W. Swanson* for Fox River Butter Company; *Grant Thornburgh* for Beatrice Creamery Company; *J. J. Farrell*, *F. M. Elkinton*, *M. H. Meyer*, and *H. N. McEwen* for National Creamery Buttermakers' Association and Cheese Shippers' Traffic Association; *Frank R. Pentlarge* for Phenix Cheese Company; *Thomas Creigh* and *C. O. Cornwell* for Cudahy Packing Company; *A. J. Killen* for William J. Moxley and others; *Delevan B. Cole* for William J. Moxley and

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Blakeslee-Thomas Company; and *C. V. Huende* for Ohio Association of Creamery Owners and Managers.

William W. Collins, jr., M. B. Pierce, N. S. Brown, and Ernest S. Ballard for defendants.

SUPPLEMENTAL REPORT OF THE COMMISSION.

DANIELS, *Chairman*:

The proposed report of the examiner in this case was served upon the parties, exceptions were filed, and the matter was argued before the Commission. With certain changes as are indicated hereinafter the report of the examiner is approved and adopted as the report of the Commission.

In the original report herein, 43 I. C. C., 392, we found that carriers in official classification territory had not justified as reasonable the class rates plus separate refrigeration charges for the transportation of dairy products, and required that the separate refrigeration charges be canceled and the traffic carried, under refrigeration, at total charges not to exceed the class rates then effective. Prior to March 20, 1915, no charge above the class rates was made for refrigeration. The tariffs providing for that charge in addition to the class rates on the date mentioned were not suspended, and our finding which resulted in the disapproval of the combined charge was made in a proceeding upon complaint. The old basis, with the class rates as maxima for the two services of line haul and refrigeration, was accordingly restored, as a result of our decision, June 1, 1917. Following the decision in the original proceeding complaints were filed for reparation, in the amount of the separate refrigeration charge, on shipments that moved between March 20, 1915, and June 1, 1917, hereafter referred to as the reparation period. When those cases were set for hearing the original proceeding was reopened.¹ Not only the claims for reparation, but the reasonableness of the charges during the period noted, as well as for the future, are therefore presented for consideration.

¹ The other complaints filed in the original proceeding were: No. 7909 (Sub-No. 1), Kansas Carlot Egg Shippers' Association v. Same; No. 7969 (Sub-No. 2), Merrell-Soule Company v. Erie Railroad Company et al.; No. 7988, Cheese Dealers' Association Company v. Baltimore & Ohio Railroad Company et al.; and No. 8265, Hanford Produce Company v. Same.

The subsequent complaints for reparation are: No. 9631, Swift & Company v. Aberdeen & Rockfish Railroad Company et al.; No. 9681, Morris & Company v. Same; No. 9698, Live Poultry and Dairy Shippers' Traffic Association et al. v. Same; No. 9717, Wilson & Company, Inc., v. Ahnapee & Western Railway Company et al.; No. 9747, Cheese Shippers' Traffic Association et al. v. Same; No. 9753, Armour & Company et al. v. Alabama & Vicksburg Railway Company et al.; No. 9755, National Poultry, Butter, and Egg Association et al. v. Aberdeen & Rockfish Railroad Company et al.; No. 9771, George Ehrat & Company et al. v. Baltimore & Ohio Railroad Company; No. 9787, The Cudahy Packing Company v. Ahnapee & Western Railway Company et al.; No. 9814, Indianapolis Chamber of Commerce et al. v. Pittsburgh, Cincinnati, Chicago & St. Louis Railroad Company et al.; No. 9848, Live Poultry and Dairy Shippers' Traffic Association v. Atchison, Topeka & Santa Fe Railway Company et al.; No. 9855, Phenix Cheese Company v. Adirondack & St. Lawrence Railroad Company et al.; and No. 9904, William J. Moxley et al. v. Baltimore & Ohio Railroad Company et al.

Of the dairy products dressed poultry is rated first class, butter and eggs second class, and cheese third class. The class rates apply on shipments in any quantity, but the exclusive use of the car is permitted for shipments of 15,000 pounds or more from one consignor to one consignee, and in this sense the rates will be referred to as carload and less-than-carload rates. The separate refrigeration charges in issue are \$2.50 a ton for ice used on carload shipments and a varying scale of rates in cents per 100 pounds on less-than-carload shipments. The average cost of icing a car is shown in the original report and on this record to be about \$16. The tonnage in question is divided about equally between carload and less than carload.

In the original proceeding the carriers, on whom was the burden of proof to justify rates increased after January 1, 1910, directed their efforts mainly to showing that the separate refrigeration charge was reasonable in itself, rather than, as they now realize they should have done, to showing that the combined charge for the two services of line haul and refrigeration was reasonable. They now accept in part the responsibility for this limited presentation, but state in extenuation that the general character of the original hearing seemed to suggest that it was the separate refrigeration charge that was really in issue. In the present proceeding they supplement the data of the other case, with respect to the reasonableness of the separate refrigeration charge, by bringing the figures down to date, and devote their main efforts to the contention that the class rates have been and are low enough for the line-haul service without refrigeration.

The theory of the carriers as to the reasonableness of the same rates for both carload and less-than-carload shipments is that the rates should be somewhere between the appropriate levels of normal rates for carload and less-than-carload shipments, respectively—that is, that they may properly be as much above a reasonable rate for a carload shipment as they are below a reasonable rate for a less-than-carload shipment.

It may be said that the general theory upon which the defendants largely proceed is that if the refrigeration charge can not be held to have been taken into consideration in making the classification originally, and during the early years of its operation, any subsequent increases in rates, carload minima for the exclusive use of cars, car loading, average length of haul, car revenue, etc., made from time to time, are immaterial to the issue and affect only the reasonableness of the rate for the line haul; while the theory of the complainants is that all these things, regardless of the question of strict classification, which tend to increase total charges under the class rates, should be taken into consideration in determining whether the class rates are now sufficiently high to include refrigeration.

The evidence offered by the carriers in this reopened proceeding, may be roughly classified under four heads:

- 1. An amplified history of the adjustment under which, for many years, charges in excess of the class rates for both line haul and refrigeration were not assessed.
- 2. The so-called wastage exhibits, which purport to show that prior to March 20, 1915, when no extra charge was made for refrigeration, wasteful use was made of the icing privilege by instructions from shippers to ice to capacity; that from that date to June 1, 1917, when the expense of icing fell upon the shipper, the amount of ice ordered was much less; and that since the latter date, when the shipper was again relieved of the cost of icing, the pendulum has begun to swing back toward the extravagant use of ice.
- 3. An elaborate showing as to the cost of handling less-than-carload freight, in its bearing upon the alleged inadequacy of the class rates for even the line haul on less-than-carload shipments.
- 4. General comparisons of carload rates on dairy products and other articles moving both in refrigerator cars and in box cars.

HISTORY OF THE CLASSIFICATION AND RATES.

The more important statements and contentions of the carriers on this subject are as follows:

Prior to 1887 separate classifications were in effect in central freight association territory, trunk line territory, New England territory, and from central freight association territory to trunk line territory. These were merged in that year into the official classification for the combined territories. The ratings prior and subsequent to the consolidation are shown in the following statement:

	Butter.		Cheese.		Eggs.		Dressed poultry.	
	L.C.L.	C. L.	L.C.L.	C. L.	L.C.L.	C. L.	L.C.L.	C. L.
New York, Lake Erie & Western ^{1 2} ..	2	.....	3	4	2	4	1	3
New York Central ^{1 2}	2	.....	3	4	2	4	1	3
Pennsylvania ^{1 2}	2	.....	3	4	2	4	1	3
Middle and western states No. 16 ⁴	2	3	3	4	2	4	1	.....
Official eastbound No. 21 ⁵	3	.....	4	.....	3	.....	2	.....
Official classification No. 1.....	2	.....	3	.....	2	.....	1	.....

¹ Butter and cheese at owner's risk in these classifications.
² Applied locally on these lines, in both directions, in New York, New Jersey, and Pennsylvania, in present trunk line territory.
³ At owner's risk. If at carrier's risk, one class higher.
⁴ Approximately central freight association territory locally but not to and from seaboard.
⁵ Central freight association territory to seaboard.

In 1875 the rate for refrigerator car service, which was given in connection with passenger-train movement, from Chicago to New York, was reduced from \$2 to \$1.50 per 100 pounds. At that time the rates of the fast freight lines, without refrigeration, for the first 51 I. C. C.

three classes from Chicago to New York were \$1.50, \$1.10, and 85 cents, respectively. These were reduced in 1878 to \$1.20, 90 cents, and 70 cents; in 1881, to \$1, 85 cents, and 70 cents; and in 1887, when the official classification was promulgated, the 75-cent scale was established. The latter scale remained in effect until increased in 1915 to 78.8 cents. In 1917 the 90-cent scale was established and this in turn under the United States Railroad Administration was supplanted by the present \$1.125 scale.

The first attempt at refrigeration was made about 1867 by the Pennsylvania lines, which refitted 30 box cars with double sides, roofs, and floors, and packed the interstices with sawdust. Ice boxes were placed just inside the doors after the cars were loaded. Later an ice box was suspended in each end of the car. Other railroads, private car companies, and large shippers of perishables took up the idea and constructed cars. Gradually the type of car improved and the volume of tonnage increased, though slowly. In the early seventies only one car a day from Chicago to New York was required by the New York Central, and in 1884, nearly 20 years after the refrigeration service was established, only about 77 tons a day moved between those points over the Pennsylvania. In the early years the service and cost of refrigeration were therefore not great, and not called sharply to the attention of the carriers as encroachments upon their revenues under the class rates; and later, as the traffic increased, the class rates were made to cover both line haul and refrigeration to stimulate the use of the service. But the granting of the refrigeration service free was a gratuity rather than the result of the class rates being considered high enough to include the service. That this is true is shown by the fact that, although when the official classification was formed, the ratings on traffic from central freight association to trunk line territory were increased one class, that is to the basis effective in other parts of the present official classification territory, the rates per 100 pounds were reduced, which resulted in a net reduction in charges paid, and by the further fact that the development of the refrigerator car traffic was greatest during the period of a constantly falling class-rate level.

It is further said that throughout the period of the development of this dairy refrigerator car traffic there was no uniformity of practice among the carriers regarding the inclusion of the service and cost of icing in the class rates. Certain illustrations are given, and attention is invited to correspondence on the subject between the chairman of the official classification committee and certain of the carriers, two of which register objections to the proposal to change from "may" to "will" the wording of the rule, referred to in the original report, regarding the obligation of the carriers to ice free of charge.

THE WASTAGE EXHIBITS.

These were elaborate and were filed by several of the defendants. Figures taken from tables purporting to show the percentage of excess in 1914, when the carrier iced free, over 1916, when the extra charge was made, in the amount of ice used, under instructions from the shipper, are shown in Appendix 1. The percentages range as high as 179.6 per cent in average weight of ice furnished per car forwarded and as high as 125.6 per cent in average weight of ice furnished per car iced. In one instance there is a slight decrease in the percentage of the average weight of ice furnished per car iced. Percentages are given in Appendix 2 of the number of cars in 1914 compared with 1916 as to which instructions were to ice to capacity; to limit icing; not to re-ice; and as to cars with no icing instructions from the shipper. The table in Appendix 2 brings the figures for the Michigan Central up to 1917, when the former basis of the class rates as maxima for both line haul and icing was restored, and purports to show the tendency on the part of shippers to revert to the former practice of giving instructions for extravagant icing.

The comment of the complainants is that the exhibits of this character prove nothing inasmuch as the argument of the carriers based thereon would be equally forceful if the icing and transportation charges were merely stated separately, subject to the class rates as the combined maxima, to which method of publication complainants have no objection.

COST FIGURES.

These represent the results of two studies of the cost of handling less-than-carload freight over station platforms. One of them covers 14 origin stations on the Cleveland, Cincinnati, Chicago & St. Louis Railway in Indiana and Ohio, and a New York Central destination station in New York; the other, 12 origin stations on the Pittsburgh, Cincinnati, Chicago & St. Louis Railway in Indiana, Ohio, and Illinois, and a Pennsylvania destination station in New York and two Pennsylvania destination stations in Philadelphia.¹ Actual costs of performing the services of (1) platform handling, (2) clerical work, and (3) switching were secured, the three items were added together, and the figures for origin and destination stations

¹ In the Cleveland, Cincinnati, Chicago & St. Louis-New York Central study the points of origin were Crawfordsville, New Ross, Pittsboro, Parker City, Farmland, Winchester, and Union City in Indiana and Versailles, Sidney, Rushsylvania, Larue, Marion, Gallon, and Delaware in Ohio; and the destination station was St. John's Park station in New York, where perhaps 90 per cent of the New York Central's dairy freight for Manhattan Island is received.

In the Pittsburgh, Cincinnati, Chicago & St. Louis-Pennsylvania study the points of origin were Vandalla, Brownstown, and St. Elmo in Illinois; Knightstown, Cambridge City, Columbus, Shelbyville, and Rushville in Indiana; and Piqua, St. Paris, South Charleston, and London in Ohio; and the destination stations were Pier 28 station in New York and Dock Street station and Spruce Street Stores station in Philadelphia.

combined to get actual costs of the two terminal services. The sum was then divided by the operating ratio, taking the average of the preceding 5-year period for each line, of the carriers making the test, in order to increase the sum to an amount to include general overhead expense, taxes, and profit, and thereby make the sum represent the level of a reasonable return for the service. The resulting figure is said to represent the reasonable return for performing the two terminal services alone in connection with a five-mile haul, which is the lowest mileage block in the average class-rate scale. As a reasonable addition for the line-haul service for this distance, the difference between the normal rates for the 5 and 10 mile blocks in the scale is taken, upon the theory that this difference must represent the sum attributable to line haul, since, regardless of the length of haul, the terminal costs remain constant. Upon comparison of the resulting figure with a normal scale of class rates in the territory affected, it was asserted by the defendants that the then effective ratings of first, second, and third class on dairy products were too low and should be increased at least to $1\frac{1}{2}$ times first, first and second class respectively, to secure minimum rates of an adequate revenue yield. The comparison is set forth in Appendix 3. This comparison is between the five-mile line haul and terminal figure and a composite class rate for five miles which reflects the percentages of the total volume of movement of all dairy products throughout the affected territory as a whole represented by the different classes of those products; that is, these percentages, furnished by the complainants, 15 for dressed poultry, 75 for butter and eggs, and 10 for cheese, are taken of the respective first, second, and third class rates and the results added together to get the composite rate. The composite class rate figured in this way on the basis of the first, second, and third class rates is 13.575 cents, and on the basis of $1\frac{1}{2}$ times first, first and second class, 16.95. The average of the five-mile line haul and terminal figures 15.947 and 17.722 shown in this comparison, is 16.835 cents.

This composite rate computation is based upon the scale of class rates prescribed for application in central freight association territory in *C. F. A. Class Scale Case*, 45 I. C. C., 254, as the normal peace time scale. It has since been increased by 15 per cent. At the time of the original hearing herein the rates in central freight association territory were lower than those prescribed in the case cited. The use of this scale the defendants state is proper not only as to shipments within central freight association territory, but also as to shipments from that territory to trunk line territory, inasmuch as the propriety of the relationship between the scales for the two classes of shipments was recognized in that case. The confining of the showing to the five-mile haul the defendants also say is proper and

of controlling force, because the proper rate of progression for the central freight association scale was there fixed. That the alleged five-mile line haul and terminal figure is not compared with the composite class rate for October and November, 1917, in the foregoing comparison is said to be proper because the higher rates in these months, which reflect increases made in the *Fifteen Per Cent Case*, 45 I. C. C., 303, do not represent normal peace time rates.

The two cost studies described relate only to less-than-carload freight, and only to freight handled over station platforms by employees of the carriers. No station at which the shipper performs in whole or in part the service of loading or unloading was included in the test. The costs obtained were for the handling at the respective stations of all less-than-carload freight. The only relation that the studies have to dairy freight exclusively is that they were made at representative dairy shipping stations on days of the week on which the dairy refrigerator cars were run.

The study undertaken by the Cleveland, Cincinnati, Chicago & St. Louis and the New York Central was for the months of May, 1916, and May and October, 1917. It was not made separately, in the ascertainment of tonnage handled, for each of the days in these months, however. Two days in October were selected, and it was assumed that the amount of tonnage handled on the other days would be the same as that for the two typical days. The tonnage figure was therefore constant, and to this figure was applied the actual varying items of cost of platform handling, clerical work, and switching, as ascertained by a check of the station records for each of the days in these months.

Because such a limited period as two days would hardly be representative of this phase of cost, the figures for maintenance of equipment were based upon a longer period—those for May, 1916, for the average of the 12 months ending May, 1916, and those for May, 1917, for the average of the first 5 months of the calendar year 1917.

The two-day study described was at points of origin, on the Cleveland, Cincinnati, Chicago & St. Louis. The terminal study at the St. John's Park station of the New York Central in New York was for six days in October, and the result of the study was raised to a monthly basis by dividing by six and multiplying by the number of working days in the month.

The study undertaken by the Pittsburgh, Cincinnati, Chicago & St. Louis and the Pennsylvania covers the months of March, 1916, and May and November, 1917. With the exception of the three Illinois points the figures for March, 1916, are based upon a study for the whole month, made in a previous investigation. The figures for the three Illinois stations for March, and for all of the origin

stations for May and November, are based upon a two-day study in November, the result of which is spread over the entire May and November periods by the process of multiplication described in connection with the study of the New York Central.¹

In the complainants' view a fairer presentation would be made by merely doubling the costs at the 26 origin stations instead of charging all less-than-carload dairy freight with the expensive terminal costs of such cities as New York and Philadelphia, which by no means attract all of the dairy traffic. It is also said that such a basis of computation would tend to counterbalance the fact that on through traffic from west of the Mississippi only one terminal service is performed by the official classification lines, and the further fact that on all of the traffic in dairy products of the larger packers between plants or branch houses, or between different branch houses, the service of both loading and unloading is performed by the shipper. The terminal and five-mile line haul figures computed on the basis suggested would be, according to the complainants, 15.74 cents for May, 1917, and 16.21 cents for October and November, 1917, compared with the 16.835 cents found by the defendants for May, 1917 and March and May, 1916.

CARLOAD REVENUE COMPARISONS.

Sprague Exhibits 13 and 13-A express the defendants' final comparison of gross ton-mile and of car-mile yields on dairy products and box car traffic. They are set out in full in Appendixes 6 and 7.

The rates used in this comparison were those in effect during the reparation period, from March 20, 1915, to June 1, 1917, when the shipper bore the cost of icing. An empty mileage of 84.6 per cent of the loaded mileage is taken into account on the dairy or refrigerator car traffic, and an empty mileage of 49 per cent of the loaded mileage on the box car traffic. The former percentage is taken from one of the complainants' exhibits which is a reproduction of an exhibit filed in *In the Matter of Private Cars*, 50 I. C. C., 652. The

¹ The figures in detail for the Cleveland, Cincinnati, Chicago & St. Louis-New York Central study are found in Appendix 4, and for the Pittsburgh, Cincinnati, Chicago & St. Louis-Pennsylvania study in Appendix 5. These are the figures shown in the exhibits as originally filed. Certain corrections were later made, but the original exhibits will answer the purpose here in view of showing in detail the manner in which these costs were computed. The corrections and other suggestions made at the hearing have all been incorporated in the final general result shown in Appendix 4.

The formula for the study and the forms thereunder, distributed to station agents for use in making the study, are made a part of the record, but owing to their comprehensive character will not be here reproduced. The formula is the outgrowth of a development of previous formulas used in other cases before the Commission, including *The Missouri River-Nebraska Cases*, 40 I. C. C., 201; *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 41 I. C. C., 83; and *C. F. A. Class Scale Case*, *supra*. It is said to be much more complete than the formulas used in those cases. The studies under the formula are also said to be more thorough in this case than in the others, because they include more stations.

The formula at the present stage of its development is now printed and used as the permanent formula of the carriers in the ascertainment of transportation costs. It can be adapted also to use in determining the cost of handling carload freight.

latter is taken from an exhibit filed in *Fresh Meat and Packing-House Products Rates*, 38 I. C. C., 665, and covers the performance of the Wabash; Cleveland, Cincinnati, Chicago & St. Louis; Pennsylvania; and Pittsburgh, Cincinnati, Chicago & St. Louis railways.

Considerable importance is attached by the defendants to these two Sprague exhibits, which they state "should be taken by the Commission as the most valuable evidence in the record on the question of the propriety of the any quantity rates as applied to carload business." They represent, as the defendants state, the point at which the complainants and defendants come nearest to agreement on the proper basis of comparison. This is shown by the conflicting contentions and the counter exhibits that characterized each step in the evolution of these final exhibits.

Thus the start was made with Sprague Exhibit 7, which was a comparison of car-mile earnings. As a counter exhibit O'Hara's Exhibit 1 was introduced, which supplied an alleged deficiency in the Sprague exhibit in the form of the inclusion of the tare weight of the car, added a column showing gross ton-mile earnings, and increased the average weight of dairy products, computed from exhibits of the defendants, from 20,000 to 21,282 pounds. This exhibit made no allowance for the empty return of the refrigerator car used in the transportation of the dairy products, as the Sprague exhibit had done. Thereupon Sprague Exhibits 12 and 12-A were introduced to show the car-mile and gross ton-mile yields respectively, and was made to reflect the empty return items of 84.6 per cent for the refrigerator cars of the dairy traffic, and 49 per cent for the box cars of the other traffic, derived from the sources stated. The weight of 20,000 pounds was again used for the dairy traffic. To meet the objection of the complainants that, while the average tare weight used was of the railroad owned refrigerator cars the percentage of empty return used was of both railroad owned and privately owned refrigerator cars, and in order to correct certain mathematical errors in the two previous exhibits Sprague Exhibits 13 and 13-A were introduced which also reflect the increased average weight of 21,282 pounds of the dairy products, as contended for by the complainants in O'Hara Exhibit 1.

One of the complainants' criticisms of the Sprague Exhibits 13 and 13-A is that the empty mileage figure of 84.6 per cent for the refrigerator cars is excessive. The exhibit taken from the private car inquiry, from which the empty mileage data were taken, shows that on the eastern railroads, the Chicago & Erie, the Erie, the Pennsylvania, the Pennsylvania Company and the Pittsburgh, Cincinnati, Chicago & St. Louis, the average loaded mileage was 51.6 per cent and the average empty mileage 48.4 per cent for private car lines owned or

controlled by shippers, and 71 per cent and 29 per cent, respectively for private car lines owned or controlled by railroads.

Another typical comparison offered by the defendants was of the car-mile yields of dairy products and other perishable refrigerator car food products, which represents a refiguring of the second table on page 408 of the original report, but reflects in the table the actual average loading on the Pennsylvania lines of the articles other than dairy products during three months of 1916, instead of the minimum weights used in the Commission's table. The complainants, contending that the gross ton-mile basis, which includes the weight of the car, affords a fairer comparison, present a revised table, which also substitutes the average loading of 21,282 pounds for the 20,000 pounds used for dairy products. The results of these various presentations are shown in Appendix No. 8.

The foregoing discussion has been only of the more important exhibits stressed by the defendants upon the rehearing and in their brief. Others were filed in profusion, which need not be analyzed in detail here. They include all sorts of revenue statements and comparisons, and deal also with the cost of icing.

THE COMPLAINANTS' EVIDENCE.

Numerous exhibits and data were also submitted by the complainants, in addition to those already referred to as having been introduced in rebuttal of certain of the defendants' exhibits. These will not be analyzed in detail. Certain of the exhibits, having to do mainly with increases in rates and car revenues in recent years, stressed in the complainants' briefs, are set forth in full in Appendixes 9 to 14, inclusive.

CONCLUSIONS.

Considerable importance seems to be attached by both parties to the record to the history of the ratings on dairy products, in its bearing upon the question whether the service and cost of refrigeration were taken into account in establishing the original classification. But whatever may be the fact in that regard is not controlling, for the matter can not be viewed wholly as one of classification, in a strict sense. That is to say, assuming even that this service and cost were not then taken into account, it does not necessarily follow that, regardless of changed conditions affecting the transportation of these products and the revenues derived therefrom, the original ratings, in their relation to the service and cost of refrigeration, continue to be reasonable.

The great development of the tonnage in dairy products, the increasing tendency to ship in carloads, the increase in the average weight of the carload and in the average length of haul, and the

better preparation, from precooling and in other ways, of the products for transportation, have been described in the original report, where reference is also made to the increase from 10,000 to 15,000 pounds in the minimum loading required for the exclusive use of a car, and to the increase in the class rates permitted in the *Five Per Cent Case*, 31 I. C. C., 351-363. And since the issuance of the original report the class rates in central freight association territory have been further increased in the *C. F. A. Class Scale Case*, already referred to; and 15 per cent has been added to the rates as thus increased, as a result of the *Fifteen Per Cent Case*, also previously referred to. In addition, a minimum loading of 24,000 pounds for carload shipments of butter and of 30,000 pounds for carload shipments of cheese has since been required by the Food Administrator. The former minimum loading required for the exclusive use of a car was 15,000 pounds, not only on these but on all the dairy products, as previously explained.

Considerable stress is also laid by the defendants upon the cost figures submitted. These are comprehensive and interesting and entitled to serious consideration, though not free from criticisms or differences of opinion as to their accuracy and underlying formula. They purport of course to reflect at best merely approximate cost.

Reserving for the moment the matter of rates for the future, the final question is whether, upon a consideration of all the foregoing and other facts of record, the revenues derived from the transportation of these products under the class rates are to be viewed as having been during the reparation period sufficiently remunerative to include the service of refrigeration, without extra charge to the shipper. The conclusion should be that they were not. Doubtless the finding herein reached would have been made in the original report had the carriers made upon the original hearing the presentation that they now make upon the rehearing. The previous finding, which was merely that the carriers had failed to meet the burden of proof which was upon them, stands upon the rehearing subject to the reversal here suggested upon the required presentation now made of that proof.

It follows that reparation on shipments that moved during the period from March 20, 1915, to June 1, 1917, when the separate refrigeration charge was made in addition to the class rate, should be denied.

It is proper to observe that in their presentation of the case initially the defendants proceeded upon the mistaken assumption that practically the only question involved was the reasonableness *per se* of the added charges for the refrigeration service, separately considered, whereas the Commission stated in its report that the separate and additional imposition of the charges for refrigeration service

was tantamount to an increase in the line haul rates. Upon rehearing, therefore, the defendants have addressed themselves rather to the reasonableness of the total charges imposed for the total transportation services, and, to use their own words, are "in the position of asking the Commission to decide the case anew on the basis of a modified record which corrects the mistakes and supplies the omissions in their evidence at the original hearing." The case having been presented anew, and the carriers having now proceeded upon the statement in our original report that the separate and additional imposition of the charges for the refrigeration service was tantamount to increasing the haulage charges, the question before us is the reasonableness of the aggregate charge paid by the shippers for the total transportation services performed, and their right to reparation in the event that the charges are found to have been unreasonable.

The study of terminal costs made by defendants seems to indicate that the charges paid by complainants were not excessive, certainly with respect to less-than-carload traffic. Defendants arrive at a figure of 16.835 cents for the terminal services and a five-mile haul. The composite rate on dairy freight for the initial distance, obtained by taking a weighted average of the first, second, and third class rates on the basis of the actual volume of movement under each class, was 13.575 cents, indicating that the rates for a five-mile haul were not high enough to pay the cost plus the usual profit for handling the traffic. In this connection it is proper to observe that there was in effect in part of central freight association territory during the reparation period a scale of class rates beginning with 7.9 cents first class, known as the C. F. A. scale. The rates on the first three classes under that scale for distances up to 85 miles were as follows:

Miles.	Class.			Miles.	Class.		
	1	2	3		1	2	3
5.....	7.9	7.9	7.4	50.....	12.0	12.1	11.0
10.....	7.9	7.9	7.4	55.....	13.7	13.1	12.1
15.....	7.9	7.9	7.9	60.....	15.2	13.7	12.6
20.....	7.9	7.9	7.9	65.....	16.3	14.7	13.7
25.....	7.9	7.9	7.9	70.....	17.9	15.8	14.2
30.....	7.9	7.9	7.9	75.....	18.9	16.8	15.8
35.....	8.9	8.9	8.4	80.....	20.5	19.4	17.9
40.....	10.0	10.0	9.5	85.....	22.1	20.0	17.9
45.....	11.0	11.0	10.5				

It will be noted that the first-class rates are less than the defendants' terminal and initial distance figure of 16.835 cents until a distance of 70 miles is reached; and that the second-class rates and third-class rates are lower up to 80 miles. These rates were in effect when the shipments in question moved and are the basis upon which certain

of the claims for reparation are predicated. There seems to be no escape from the conclusion that if the rates on dairy freight for relatively short distances were actually less than the cost of the service performed with the usual profit, then the rates for the longer distances must also have been inadequate; for if the initial composite rate of 13.575 cents is increased for the various mileage blocks at the rate of progression adopted by the Commission in the *C. F. A. Class Scale Case*, the rate at each step will necessarily be too low because the initial rate is too low.

That the rates paid by complainants, including the separate charges for refrigeration service, were not excessive is further indicated by comparing the aggregate rates actually paid with the rates prescribed by the Commission for application in central freight association territory in *C. F. A. Class Scale Case*, which was decided June 29, 1917, less than one month after the reparation period. The rates there established were later increased 15 per cent, but that increase is not included in the following comparisons. The distance from Chicago to Buffalo is slightly less than 500 miles, and the haul is plainly typical of long distance hauls in central freight association territory. The first, second, and third class rates from Chicago to Buffalo during the reparation period, plus the less-than-carload refrigeration charges, were 52.3 cents, 46 cents and 36.5 cents. The rates prescribed by the Commission for that distance, without including the 15 per cent advance, were 54 cents, 46 cents and 36 cents. Similarly, the total charges for the haul from Chicago to Indianapolis were 38.6 cents, 34.4 cents and 28.1 cents, whereas the rates prescribed by the Commission were 39 cents, 33 cents and 26 cents. These comparisons indicate that the rates paid by complainants in central freight association territory were not excessive.

Apparently there is no good reason for maintaining rates on dairy freight moving as it does, almost invariably in refrigerator cars and in expedited service, which yield lower earnings than the rates on first and second class commodities moving in box cars. The following table, taken from one of the defendants' exhibits, compares the earnings on the two classes of traffic based on the rates applicable during the reparation period:

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Commodity.	Distance.	Weight.	Car-mile earnings.	Ton-mile earnings.
	Miles.	Pounds.	Cents.	Miles.
Rubber boots and shoes.....	991	26,057	18.81	14.89
Do.....	991	22,107	16.57	14.99
Do.....	991	28,751	17.81	14.89
Shoes.....	1,138	18,612	12.07	12.97
Do.....		18,945	11.90	12.87
Do.....	1,116	17,640	11.96	13.22
Do.....	1,136	21,870	14.13	13.22
Do.....	1,116	20,870	13.47	13.22
Surgical dressing.....	807	14,000	12.06	13.98
Automobiles.....	820	10,000	13.87	25.75
Do.....		11,200	14.98	25.25
Do.....	270	11,200	17.75	21.70
Do.....		10,000	15.85	21.70
Do.....	292	10,000	14.96	20.22
Auto bodies and parts.....	230	10,000	12.15	24.21
Broom corn.....	1,177	20,100	12.73	12.62
Rubber boots and shoes.....	1,096	23,873	19.77	15.70
Flannel shirts.....	164	20,298	32.40	51.90
Dry goods.....	957	25,814	17.00	11.80
Leather boots and shoes.....	1,424	20,815	22.90	21.40
Do.....	1,424	23,580	25.90	21.30
Flannels.....	957	11,700	11.00	19.00
Hosiery.....	297	23,057	24.70	21.60
Typewriters.....	1,002	25,040	22.10	15.80
Do.....	1,002	27,721	22.60	15.80
Do.....	1,002	17,810	14.00	15.70
Milkery goods.....	1,002	18,100	16.20	18.10
Planos.....	291	14,585	21.80	20.80
Felt.....	1,002	20,700	18.60	18.50
Surgical goods.....	778	95,600	53.45	22.30
Dressed poultry.....	806	21,282	18.70	17.00
Butter and eggs.....	806	21,282	16.20	15.30
Cheese.....	806	21,282	12.47	11.71

¹ Does not include icing charge or empty return haul.

Comparisons between the rates on dairy freight and the rates on fruits and vegetables stressed by complainants and shown in Appendix 8 are not particularly helpful because of differences in transportation conditions. Potatoes and apples, for example, are fifth-class commodities, frequently moving in ordinary box cars and without refrigeration. It is to be expected that the earnings on these commodities would be substantially lower than those on dairy freight. Oranges and lemons ordinarily move much greater distances than dairy freight, and on commodity rates that are blanketed over a large section of the country. It is not probable that there is an appreciable movement of oranges, lemons, or bananas on the class rate shown in Appendix 8. With respect to peaches and berries we said in *Platts v. N. Y., N. H. & H. R. R. Co.*, 39 I. C. C., 690, at page 694:

Peaches and berries, other than cranberries, are rated first class in carloads and one and one-half times first class in less than carloads, but the carload minimum on peaches is 20,000 pounds and on berries 17,000 pounds. It does not appear that the defendants have ever offered free icing on peaches and berries.

In comparing the rates on dairy freight with the rates on fruits and vegetables the Commission may not properly overlook the fact that dairy products are high-grade commodities, and that the freight rates are a relatively small item in the selling price. One of the exhibits of record shows the percentage relation between the Chicago-New

York rates in 1915 and the average wholesale price in New York to have been as follows:

Article.	Relation of rate to sell- ing price.	Article.	Relation of rate to sell- ing price.
	<i>Per cent.</i>		<i>Per cent.</i>
Butter.....	2.41	Watermelons, per 100 to car.....	31.80
Eggs.....	3.96	Peaches.....	19.96
Cheese.....	3.47	Bananas.....	22.33
Dressed poultry.....	4.48	Lemons.....	14.49
Apples.....	20.79	Pineapples.....	27.34
Pears.....	17.73	Cabbage.....	16.96
Muskmelons.....	10.63	Celery.....	16.29
Cranberries.....	9.02	Onions.....	17.53
Oranges.....	12.36	Potatoes.....	17.56
Quinces.....	12.96	Tomatoes.....	9.86

It should be added that during the reparation period the value of the commodities involved increased substantially, and that the prices at the end of that period were much higher than they were in 1914.

It may fairly be said that the only rate comparisons of record seeming to indicate that the rates attacked were relatively high are those between dairy freight and fresh meats. The latter, however, move in very large volume and the comparisons may indicate that they were somewhat low rather than that the rates on dairy freight were unreasonably high. In *Platts v. N. Y., N. H. & H. R. R. Co., supra*, the complainants, who there sought reparation because of the separate imposition of icing charges on shipments of oysters from the Atlantic seaboard to western points, based their allegation of unreasonableness in part on comparisons with the rates on other food products, including fresh meats. In our report in that case, where we held that the defendants had justified the separate imposition of icing charges on shipments of oysters, we said, at pages 693 and 694:

They show, for example, that bananas are rated third class in carloads and first class in less than carloads; that butter is rated second class, any quantity; fresh dressed meat, first class, any quantity, with much lower rates published by individual lines for the movement in carloads; cheese, third class, any quantity; fish, fresh or frozen, third class in carloads and first class in less than carloads; and live lobsters, third class in carloads and first class in less than carloads.

Some of these commodities, however, are so dissimilar to shucked oysters that the comparisons are not helpful. It is not shown that bananas are fairly comparable with oysters. Fresh meat moves in large volume eastbound and competition with live stock is said to have been in part responsible for the lower rating on that commodity. Butter and cheese differ from oysters in that they are produced in different parts of the country, and move extensively in carload quantities throughout the year. The third-class rating on live lobsters, in carloads, is said to have been established to permit them to move in mixed carloads with clams, fish, and other sea food.

While defendants seek to show that with respect to a large part of the traffic involved the complainants here before us did not ultimately bear the transportation charges, but passed them on to con-

signees in the form of increased prices, that fact would not preclude an award of reparation to the claimants. *S. P. Co. v. Darnell-Taenzer Lumber Co.*, 245 U. S., 531.

Reverting to the issue of rates for the future raised in the original complaint, we are of opinion that no finding need be made in this report. For the reparation period, it is evident that no extra charge has been paid by the shippers for refrigeration service, and clearly no demand for undercharges can be asserted by the carriers. For the period subsequent to June 25, 1918, the rates applicable to this traffic were those initiated by the Director General and can not be passed upon unless specifically complained of. It may well be that in the time following the reparation period and up to June 25, 1918, the higher level of class rates would, under all the circumstances, be sufficiently remunerative to cover both the line-haul service and the refrigeration service; and this report is not to be construed as indicating that, irrespective of the level of class rates, a separate additional charge for refrigeration service is warranted. Another reason for making no finding for the period between June 1, 1917, and June 25, 1918, is that there is pending before the Commission in Docket No. 8469, *Kansas Carlot Egg Shippers Asso. v. B. & O. R. R. Co.*, a petition for the establishment of a carload rate on dairy products. If, as the outcome of that case, such a carload rate should be established, the question might independently arise whether upon the less-than-carload traffic separate additional charges for the refrigeration service should be assessed. In view of the fact that for the period specified, from June 1, 1917, to June 25, 1918, a specific finding as to reasonable rates on this traffic would in no wise affect either carrier or shipper, and in view of the fact that the question of replacing the any-quantity system of charges by a carload rate is to be determined in another case, no specific finding upon the issue originally raised as to rates for the future is here made.

Upon careful consideration of the whole record, including the exceptions filed to the examiner's report and the oral argument thereon, we find and conclude that the aggregate rates paid by the complainants for line haul and refrigeration during the reparation period are shown to have been reasonable for the total service performed. The report of the examiner, as qualified herein, is adopted by the Commission.

An order will be entered dismissing the complaints.

51 I. C. C.

HARLAN, *Commissioner*, concurring:

In a brief expression of my individual views accompanying the original report of the Commission in this proceeding, 43 I. C. C., 392, 410, I directed attention to the inconsistencies, inequalities, and discriminations resulting from the inclusion in the stated rates of carriers of compensation both for the line haul and for refrigeration, and I there noted a protest against the Commission's order, requiring the defendants to restore rates of that character, because the necessary result would be to impose a refrigeration charge throughout the entire year on shippers of eggs and cheese, although the record showed that during the winter months they did not require or actually use a refrigeration service. I noted my protest also because the restoration of the defendants' rates so required by the Commission would necessarily put upon shippers of poultry during the winter months a charge for refrigeration 100 per cent greater than the refrigeration service actually required by such shippers or actually furnished to them by the carriers. These objections are in no wise met by the foregoing supplemental report of the Commission. On the contrary a rate adjustment which results in charging some shippers for refrigeration not needed or used by them, and others for refrigeration much in excess of the service actually rendered, is perpetuated by the supplemental report, for the time being at least, and no suggestion is offered in the report for lifting these unjust burdens from such shippers for the future. To that extent I am unable to concur in the supplemental report, and I again venture to express the conviction that the burdens of transportation can never be equitably distributed until the charges for refrigeration and other similar special services are required by the Commission to be stated by the carriers separately from their line-haul charges as was obviously contemplated by the Congress under section 6 of the act to regulate commerce as amended. *I. C. C. v. Stickney*, 215 U. S., 98, 104. Only the shippers who require and actually enjoy the benefit of such special services should be called upon by the carriers to pay for them; and when compensation for such services is included in the rates exacted of shippers that do not require and do not actually receive the benefit of the services a manifest injustice is done them.

In now denying the reparation that was awarded under its original report the Commission in my judgment puts itself on sound grounds; I also concur in the general conclusions now announced by the Commission as to the reasonableness of the charges attacked in the complaint.

COMMISSIONER MEYER did not participate in the disposition of these cases.

APPENDIXES.

APPENDIX 1.

Wastage, 1914 over 1916.

	1914	1916	Difference.	
	Pounds.	Pounds.	Pounds.	Per cent.
Pennsylvania.....	¹ 7,211	2,934	4,278	145.8
	² 8,105	5,488	2,617	47.6
Wabash.....	¹ 3,383	1,891	1,491	78.9
	² 5,331	4,395	936	21.3
Baltimore & Ohio.....	¹ 4,480	2,669	1,811	68
	² 6,635	5,135	1,200	23.4
Michigan Central.....	¹ 4,927.69	1,761.57	3,166.12	179.7
	² 5,034	2,231.8	2,802.2	125.6
Grand Trunk.....	¹ 3,995	2,105	1,890	89.8
	² 4,988	3,663	1,275	34.8
Cleveland, Cincinnati, Chicago & St. Louis.....	¹ 3,002	1,097	1,905	173.7
	² 5,578	5,999	³ 421	³ 7.5

¹ Average weight of ice furnished per car forwarded.
² Average weight of ice furnished per car iced.
³ Decrease.

APPENDIX 2.

	New York Central		Michigan Central.				
	June, 1914.	June, 1916.	Cal- endar year. 1914.	Cal- endar year. 1916.	July, 1914.	July, 1916.	July, 1917.
	<i>Per ct.</i>	<i>Per ct.</i>	<i>Per ct.</i>	<i>Per ct.</i>	<i>Per ct.</i>	<i>Per ct.</i>	<i>Per ct.</i>
Cars with instructions to ice to capacity.....	65.26	18.31	45.23	3.97	41.72	7.22	17.22
Cars on which icing instructions were limited..	5.79	49.29	4.64	56.61	7.97	76.67	33.77
Cars with instructions not to reice.....	1.06	4.23	2.11	21.07	.....	.55	1.33
Cars with no icing instructions from shipper..	27.89	28.17	48.02	18.35	50.81	15.56	46.78
	100.00	100.00	100.00	100.00	100.00	100.00	100.00

51 I. O. Q.

APPENDIX 3.
Ascertained costs (in cents) of terminal service and 5-mile haul.

Classification.	Revenues computed at 5-mile rate; I. & S. 965 scale.	C. C. C. & St. L. Ry. and N Y. C. R. R.				P. C. C. & St. L. Ry. and Pa. R. R.				Average total costs.			
		May, 1916.		May, 1917.		March, 1916.		May, 1917.		March and May, 1916.		May, 1917.	
		Terminal costs.	Line and terminal costs.	Terminal costs.	Line and terminal costs.	Terminal costs.	Line and terminal costs.	Terminal costs.	Line and terminal costs.	Terminal costs.	Line and terminal costs.	Terminal costs.	Line and terminal costs.
1, 2, 3.....	13.576	14.568	15.568	16.620	17.620	14.955	15.955	16.729	17.729	14.947	15.947	16.722	17.722
1 1/2 X 1, 1, 2.....	16.350												
1 1/2 X 1, 1, 2.....	16.950												
1 1/2 X 1, 1 1/2 X 1, 2.....	19.950												

APPENDIX 4.

THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY CO., AND THE NEW YORK CENTRAL RAILROAD CO.—*Statement showing the average direct terminal costs per hundred pounds for handling L. C. L. freight, including "L. C. L. dairy freight," at 14 originating stations and 1 destination station, based upon costs in effect during the month of May, 1916, applied to the test period.*

THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY CO., AND THE NEW YORK CENTRAL RAILROAD CO.—*Statement showing the average direct terminal costs per hundred pounds for handling L. C. L. freight, including "L. C. L. dairy freight," at 14 originating stations and 1 destination station, based upon costs in effect during the month of May, 1917, applied to the test period.*

THE CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY, AND
THE NEW YORK CENTRAL RAILROAD COMPANY.—*Statement showing the average
direct terminal costs per hundred pounds for handling L. C. L. freight, including
"L. C. L. Dairy Freight," at fourteen originating stations and one destination station
for a test period during the month of October, 1917.*

THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY, AND THE NEW YORK CENTRAL RAILROAD COMPANY.—Statement showing the direct terminal costs per 100 pounds at 14 originating stations and one destination station, shown in the cost exhibits, compared with the weighted average earnings on dairy freight computed on the old central freight association scale and the I. & S. 965 scale.—Con.

PH 99

COST. Average direct terminal costs.

	May, 1916.	May. 1917.	October, 1917.
	Cents.	Cents.	Cents.
Originating stations.....	4.511	5.645	5.983
Destination station.....	6.079	6.311	7.240
Total.....	10.590	11.956	13.223
Revenue needed to produce operating ratio of 71.43 per cent on direct terminal costs only.....	14.825	16.738	18.512

REVENUE, IN CENTS. (Old C. F. A. scale.)

Commodity.	Classes per official classification.	Percent- age of tonnage.	Mileage blocks.											
			5-10		40		55		65		75		80	
			Rate.	Revenue.	Rate.	Revenue.	Rate.	Revenue.	Rate.	Revenue.	Rate.	Revenue.	Rate.	Revenue.
Dressed poultry.....	1	22.29	7.9	1.76091	10	2.22900	13.7	3.06373	16.3	3.63327	18.9	4.21281	20.5	4.56945
Butter and eggs.....	2	77.70	7.9	6.13830	10	7.77000	13.1	10.17870	14.7	11.42190	16.8	13.05360	19.4	15.07380
Cheese.....	3	.01	7.4	.00074	9.5	.00095	12.1	.00121	13.7	.00137	15.8	.00158	17.9	.00179
Total.....		100.00	.....	7.89995	.....	9.99995	.....	13.23864	.....	15.05654	.....	17.26799	.....	19.64504

THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY, AND THE NEW YORK CENTRAL RAILROAD COMPANY.—Statement showing the direct terminal costs per 100 pounds at 14 originating stations and one destination station, shown in the cost exhibits, compared with the weighted average earnings on dairy freight computed on the old central freight association scale and the I. & S. 965 scale—Continued.

REVENUE, IN CENTS. (I. & S. 965 scale.)

Commodity.	Classes per official classification.	Percent-age of tonnage.	Mileage blocks.											
			5		10		15		20		25		30	
			Rate.	Revenue.	Rate.	Revenue.	Rate.	Revenue.	Rate.	Revenue.	Rate.	Revenue.	Rate.	Revenue.
Dressed poultry.....	1	22.29	16	3.56640	17	3.78830	18	4.01220	19	4.23510	20	4.45800	21	4.68090
Butter and eggs.....	2	77.70	13.5	10.48950	14.5	11.28650	15	11.65500	16	12.43200	17	13.20900	18	13.98600
Cheese.....	3	.01	10.5	.00105	11.5	.00115	12	.00120	12.5	.00125	13	.00130	14	.00140
Total.....		100.00	.....	14.05695	.....	15.05695	.....	15.66840	.....	16.66835	.....	17.66830	.....	18.66830

REVENUE, IN CENTS. (I. & S. 965 scale plus 15 per cent.)

Commodity.	Classes per official classification.	Percent-age of tonnage.	Mileage blocks.											
			5		10		15		20		25		30	
			Rate.	Revenue.	Rate.	Revenue.	Rate.	Revenue.	Rate.	Revenue.	Rate.	Revenue.	Rate.	Revenue.
Dressed poultry.....	1	22.29	18.5	4.12365	19.5	4.34655	20.5	4.56945	22	4.90380	23	5.12670	24	5.34960
Butter and eggs.....	2	77.70	15.5	12.04350	16.5	12.82050	17.5	13.59750	18.5	14.37450	19.5	15.15150	20.5	15.92850
Cheese.....	3	.01	12.5	.00125	13	.00130	13.5	.00135	14.5	.00145	15.5	.00155	16	.00160
Total.....		100.00	.....	16.16840	.....	17.16835	.....	18.16830	.....	19.27975	.....	20.27975	.....	21.27970

APPENDIX 5.

PENNSYLVANIA SYSTEM. REFRIGERATION CASE INVESTIGATION—*Statement showing terminal costs per 100 pounds for handling dairy freight (in lots of less than 15,000 pounds) at 12 originating stations and 2 destination stations in March, 1916, May, 1917, and November, 1917; also the average rate per 100 pounds at the base rate (5 miles) and progressed up to and including 70 miles on all dairy freight actually shipped from the 12 originating stations in pick-up refrigerator cars during the month of October, 1917.*

	March, 1916.	May, 1917.	November, 1917.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Average terminal costs, 12 originating stations.....	5.0	5.61	5.00
Average terminal costs, 2 destination stations.....	6.13	6.89	7.04
Combined average terminal costs.....	11.13	12.50	12.46
Same, divided by operating ratio.....	15.4	16.0	16.8
Average base rate (5 miles) per 100 pounds.....	7.9	7.9	14.3
Average 10 mile rate per 100 pounds.....	7.9	7.9	15.3
Average 15 mile rate per 100 pounds.....	7.9	7.9	16.3
Average 20 mile rate per 100 pounds.....	7.9	7.9	16.9
Average 25 mile rate per 100 pounds.....	7.9	7.9	.....
Average 30 mile rate per 100 pounds.....	7.9	7.9	.....
Average 35 mile rate per 100 pounds.....	8.9	8.9	.....
Average 40 mile rate per 100 pounds.....	10.0	10.0	.....
Average 45 mile rate per 100 pounds.....	11.0	11.0	.....
Average 50 mile rate per 100 pounds.....	12.3	12.3	.....
Average 55 mile rate per 100 pounds.....	13.3	13.3	.....
Average 60 mile rate per 100 pounds.....	14.2	14.2	.....
Average 65 mile rate per 100 pounds.....	15.2	15.2	.....
Average 70 mile rate per 100 pounds.....	15.5	16.5	.....

1 5 months.

2 8 months.

PENNSYLVANIA SYSTEM. REFRIGERATION CASE INVESTIGATION—*Statement showing average rate per 100 pounds at the base rate on all dairy freight actually shipped from 12 originating stations in pick-up refrigerator cars during the month of October, 1917.*

No cheese shipped. Average base rate per 100 pounds, 14.3 cents (Disque scale). Average base rate per 100 pounds, 7.9 cents (old scale).

S. I. C. C.

PENNSYLVANIA SYSTEM. REFRIGERATION CASE INVESTIGATION.—*Statement showing cost per 100 pounds for handling l. c. l. freight at fourteen stations during the month of March, 1918.*

PENNSYLVANIA SYSTEM. REFRIGERATION CASE INVESTIGATION.—*Statement showing cost per 100 pounds for handling l. c. l. freight at fourteen stations during the month of May, 1917.*

511 C. C.

PENNSYLVANIA SYSTEM. REFRIGERATION CASE INVESTIGATION.—*Statement showing cost per 100 pounds for handling l. c. l. freight at fourteen stations during the month of November, 1917.*

APPENDIX 6.

Statement showing return per gross ton (loading, equipment, and ice) on various commodities (customarily loaded in box cars) from Chicago to New York based upon average loading presented by the carriers in the Five Per Cent Case.

¹Iceing expense, \$16.13, deducted.

²No iceing deducted.

51 I. C. C.

APPENDIX 7.

Statement showing return per car-mile on various commodities (customarily loaded in box cars) from Chicago to New York based upon average loading presented by the carriers in Five Per Cent Case.

51 L. C. C.

¹ No icing deducted.

² Icing expense 16.12 deducted.

APPENDIX 8.

- A. Minimum weight (in pounds) except that figures for dairy products (last three) represent average loading as shown in original proceeding.
B. Rate (in cents per hundred pounds).
C. Per car-mile (in cents).
D. Per gross ton-mile (in mills).
1. Reproduction of second table on page 408 of original report.
2. Table shown under 1 refigured by defendants by using actual average weights of articles other than dairy products.
3. Tables shown under 1 and 2 refigured by complainants by using actual average weight shown in the proceeding of dairy products and by adding a column D to show the gross ton-mile revenue.

51 L. O. C.

APPENDIX 9.

Exhibit showing increased carload revenue for transportation of shipments of dairy products in refrigerator cars from Chicago to New York.

	Dressed poultry.			Butter and eggs.			Cheese.		
	Prior to Feb. 1, 1913.	Mar. 20, 1915, to June 1, 1917.	Subsequent to July 16, 1917.	Prior to Feb. 1, 1913.	Mar. 20, 1915, to June 1, 1917.	Subsequent to July 16, 1917.	Prior to Feb. 1, 1913.	Mar. 20, 1915, to June 1, 1917.	Subsequent to July 16, 1917.
Transporting 10,000-pound cars.....	\$75. 00	\$78. 80	.....	\$65. 00	\$68. 30	.....	\$50. 00	\$52. 50	.....
L. C. L. refrigeration.....	.....	8. 00	.....	.....	8. 00	.....	.....	8. 00	.....
Total.....	75. 00	86. 80	.....	65. 00	76. 30	.....	50. 00	60. 50	.....
Transporting 15,000-pound cars.....	112. 50	118. 20	\$135. 00	97. 50	102. 45	\$118. 50	75. 00	78. 75	\$90. 00
S. & Co. maximum icing.....	.....	10. 00	.....	.....	10. 00	.....	.....	10. 00	.....
Total.....	112. 50	128. 20	135. 00	97. 50	112. 45	118. 50	75. 00	88. 75	90. 00
Transporting 20,000-pound cars.....	150. 00	157. 60	180. 00	130. 00	136. 60	158. 00	100. 00	105. 00	120. 00
S. & Co. maximum icing.....	.....	10. 00	.....	.....	10. 00	.....	.....	10. 00	.....
Total.....	150. 00	167. 60	180. 00	130. 00	146. 60	158. 00	100. 00	115. 00	120. 00

APPENDIX 10.

Prior to February 1, 1913, the carriers in official classification territory generally provided a minimum of 10,000 pounds per car of dairy products to one consignee and destination when the sole use of the car was allotted to the shipment. Effective on that date, the minimum was advanced to 15,000 pounds.

Prior to March 20, 1915, all refrigeration was furnished at carrier's expense on cars handled under the above rule.

Effective March 20, 1915, all expenses incident to refrigeration were assumed by shipper or consignee.

Effective June 1, 1917, carriers published tariff authority authorizing the absorption of all icing on cars loaded to or paying on a revenue basis equal to 15,000 pounds.

Effective January 15, 1915, class rates were advanced 5 per cent.

Effective July 16, 1917, class rates were advanced approximately 14 per cent.

The advances affected the first, second, and third class rates from Chicago, Ill., to New York, N. Y., as follows:

	First class, dressed poultry.	Second class, but- ter and eggs.	Third class, cheese.
Prior to Jan. 15, 1915.....	75	65	50
Effective Jan. 15, 1915.....	78.8	68.3	52.5
Effective July 16, 1917.....	90	79	60

The following table shows effect of these changes in the earnings on dairy products as indicated, Chicago, Ill., to New York, N. Y.

	Prior to Feb. 1, 1913.	Subsequent to Mar. 20, 1915.	Subsequent to July 16, 1917.
Dressed poultry:			
10,000 pounds.....	\$75.00		
15,000 pounds.....		\$118.20	\$135.00
Refrigeration (average).....		16.00	
Total.....	75.00	134.20	135.00
Butter and eggs:			
10,000 pounds.....	65.00		
15,000 pounds.....		102.45	118.50
Refrigeration (average).....		16.00	
Total.....	65.00	118.45	118.50
Cheese:			
10,000 pounds.....	50.00		
15,000 pounds.....		78.75	90.00
Refrigeration (average).....		16.00	
Total.....	50.00	94.75	90.00

APPENDIX 11.—This exhibit shows the rate and revenue on dairy products versus other food products from Chicago, Ill., to the points indicated.

	First class, dairy poultry, 15,000 pounds minimum.		Second class, butter and eggs, 15,000 pounds minimum.		Third class, cheese, 15,000 pounds minimum.		Fresh meats, 21,000 pounds minimum.		Apples, ¹ 30,000 pounds minimum.		Vegetables, ¹ 20,000 pounds minimum.		Citrus fruits, ¹ 26,700 pounds minimum.	
	Rate.	Revenue.	Rate.	Revenue.	Rate.	Revenue.	Rate.	Revenue.	Rate.	Revenue.	Rate.	Revenue.	Rate.	Revenue.
Pittsburgh, Pa. Icing..... Total.....	47.3	\$70.95 9.10	41	\$61.50 6.25	31.5	\$47.25 6.25	28.4	\$59.64 9.10	25	\$75.00 10.00	28½	\$57.50 10.00	28½	\$76.76 10.00
		80.05		67.75		54.50		68.74		85.00		67.50		86.76
	* 62	* 90.00	* 52.5	* 78.75	* 41.5	* 62.25	(*)	(*)	(*)		(*)		(*)	
Pittsburgh, Pa., effective Sept. 20, 1917..... Baltimore, Md..... Icing..... Total.....	75.8	113.70 13.00	65.3	97.95 10.00	49.5	74.25 10.00	44.5	93.45 13.00	25	75.00 12.50	31½	62.50 12.50	28½	76.76 12.50
		126.70		107.95		84.25		106.45		87.50		75.00		89.26
	* 87	130.50	* 76	114.00	* 57	85.50	(*)		(*)		(*)		(*)	
Baltimore, Md., effective July 16, 1917..... Philadelphia, Pa..... Icing..... Total.....	76.8	115.20 13.00	66.3	99.45 10.00	50.5	75.75 10.00	45.5	95.55 13.00	25	75.00 12.50	31½	62.50 12.50	28½	76.76 12.50
		128.20		109.45		85.75		108.55		87.50		75.00		89.26
	* 88	132.00	* 77	115.50	* 58	87.00	(*)		(*)		(*)		(*)	
Philadelphia, Pa., effective July 16, 1917..... New York, N. Y..... Icing..... Total.....	78.8	118.20 13.00	68.3	102.45 10.00	52.5	78.75 10.00	47.5	99.75 13.00	25	75.00 12.50	31½	62.50 12.50	28½	76.76 12.50
		131.20		112.45		88.75		112.75		87.50		75.00		89.26
	* 90	* 135.00	* 79	* 118.50	* 60	* 90	(*)		(*)		(*)		(*)	
New York, N. Y., effective July 16, 1917..... Boston, Mass..... Icing..... Total.....	85.8	128.70 14.85	74.3	111.45 11.85	57.5	86.25 11.85	47.5	99.75 14.85	25	75.00 15.00	31½	62.50 15.00	28½	76.76 15.00
		143.55		123.20		98.10		114.60		90.00		77.50		91.76
	* 97	* 145.50	* 85	* 137.50	* 65	* 97.50	(*)		(*)		(*)		(*)	
Boston, Mass., effective July 16, 1917.....														

¹ Rate 25 per cent of through rate, Pacific coast to all points indicated, Trans-Continental Freight Bureau I. C. C. No. 1038, items 125, 1210, 485. Icing difference between refrigeration rate Pacific coast points to Chicago and destinations indicated, A. T. & S. F., I. C. C. 7613.
* No change in rate.

APPENDIX 12.—This exhibit is a comparison of the revenue return and icing expense on dairy products, based on a 20,000-pound minimum, versus other food products at the minimum weight indicated.

INTERSTATE COMMERCE COMMISSION REPORTS.

From Chicago, Ill., to—	First class, dressed poultry, 20,000 pounds minimum.		Second class, butter and eggs, 20,000 pounds minimum.		Third class, cheese, 20,000 pounds minimum.		Fresh meats, 21,000 pounds minimum.		Apples, ¹ 30,000 pounds minimum.		Vegetables, ¹ 20,000 pounds minimum.		Citrus fruits, ¹ 26,700 pounds minimum.	
	Rate.	Revenue.	Rate.	Revenue.	Rate.	Revenue.	Rate.	Revenue.	Rate.	Revenue.	Rate.	Revenue.	Rate.	Revenue.
Pittsburgh, Pa.....	47.3	\$94.60	41	\$82.00	31.5	\$63.00	28.4	\$59.64	25	\$75.00	28½	\$57.50	28½	\$76.76
Icing.....		9.10		6.25		6.25		9.10		10.00		10.00		10.00
Total.....		103.70		88.25		69.25		68.74		85.00		67.50		86.76
Pittsburg, Pa., effective Sept. 20, 1917.....	62	\$124.00	52.5	\$106.00	41.5	\$83.00	(2)		(2)		(2)		(2)	
Baltimore, Md.....	75.8	151.60	65.3	130.60	49.5	99.00	44.5	93.45	25	75.00	31½	62.50	28½	76.76
Icing.....		13.00		10.00		10.00		13.00		12.50		12.50		12.50
Total.....		164.60		140.60		109.00		106.45		87.50		75.00		89.26
Baltimore Md., effective July 16, 1917.....	87	\$174.00	76	\$152.00	57	\$114.00	(2)		(2)		(2)		(2)	
Philadelphia, Pa.....	76.8	153.60	66.3	132.60	50.5	101.00	45.5	95.55	25	75.00	31½	62.50	28½	76.76
Icing.....		13.00		10.00		10.00		13.00		12.50		12.50		12.50
Total.....		166.60		142.60		111.00		108.55		87.50		75.00		89.26
Philadelphia Pa., effective July 16, 1917.....	88	\$176.00	77	\$154.00	58	\$116.00	(2)		(2)		(2)		(2)	
New York, N. Y.....	78.8	157.60	68.3	136.60	52.5	105.00	47.5	99.75	25	75.00	31½	62.50	28½	76.76
Icing.....		13.00		10.00		10.00		13.00		12.50		12.50		12.50
Total.....		170.60		146.60		115.00		112.75		87.50		75.00		89.26
New York, N. Y., effective July 16, 1917.....	90	\$180.00	79	\$158.00	60	\$120.00	(2)		(2)		(2)		(2)	
Boston, Mass.....	85.8	171.60	74.3	148.60	57.5	115.00	47.5	99.75	25	75.00	31½	62.50	28½	76.76
Icing.....		14.85		11.85		11.85		14.85		15.00		15.00		15.00
Total.....		186.45		160.45		126.85		114.60		90.00		77.50		91.76
Boston, Mass., effective July 16, 1917.....	97	\$194.00	85	\$170.00	65	\$130.00	(2)		(2)		(2)		(2)	

¹ Rate 25 per cent of through rate, Pacific coast to all points indicated, Trans-Continental Freight Bureau I. C. C. No. 1038, items 125, 1210, 485. Icing difference between refrigeration rate Pacific coast points to Chicago and destinations indicated, A. T. & S. F., I. C. C. 7613. ² Icing absorbed. ³ No change in rate.

APPENDIX 13.

Statement showing increases and percentages of increase in rates on dressed poultry, butter, eggs, and cheese, from Chicago, Ill., to points in central freight association and eastern trunk line territories.

From Chicago, Ill., to—	Dressed poultry.						Butter and eggs.						Cheese.				
	Prior 5 per cent advance.	Subse- quent to Mar. 20, 1915.	Per cent increase in aggre- gate.	Subse- quent to July 16, 1917.	Per cent increase over rates in effect prior to 5 per cent advance.		Prior 5 per cent advance.	Subse- quent to Mar. 20, 1915.	Per cent increase in aggre- gate.	Subse- quent to July 16, 1917.	Per cent increase over rates in effect prior to 5 per cent advance.		Prior 5 per cent advance.	Subse- quent to Mar. 20, 1915.	Per cent increase in aggre- gate.	Subse- quent to July 16, 1917.	Per cent increase over rates in effect prior to 5 per cent advance.
Hammond, Ind.....	10.5	11.0 5.0	52.4	25.5	142.9		10.0	10.5 5.0	55.0	21.5	115.0		9.0	9.5 5.0	61.1	17.0	88.9
Indianapolis, Ind.....	31.5	33.1 5.0	20.9	45.0	42.9		27.0	28.4 5.0	23.8	38.5	42.6		21.5	22.6 5.0	28.4	30.0	39.5
Cleveland, Ohio.....	41.0	43.1 5.0	17.3	54.0	31.7		35.0	36.8 5.0	25.1	46.0	31.4		26.0	27.3 5.0	24.2	36.0	38.5
Pittsburgh, Pa.....	45.0	47.3 5.0	16.2	62.0	37.8		39.0	41.0 5.0	18.0	52.5	34.6		30.0	31.5 5.0	21.7	41.5	38.3
Washington, D. C.....	72.0	75.8 8.0	16.4	87.0	20.8		62.0	65.3 8.0	18.2	76.0	22.6		47.0	49.5 8.0	22.3	57.0	21.3
Baltimore, Md.....	72.0	75.8 8.0	16.4	87.0	20.8		62.0	65.3 8.0	18.2	76.0	22.6		47.0	49.5 8.0	22.3	57.0	21.3
Philadelphia, Pa.....	73.0	76.8 8.0	16.2	88.0	20.5		63.0	66.3 8.0	18.0	77.0	22.2		48.0	50.5 8.0	21.9	58.0	20.8
New York, N. Y.....	75.0	78.8 8.0	15.7	90.0	20.0		65.0	68.3 8.0	17.4	79.0	21.5		50.0	52.5 8.0	21.0	60.0	20.0
Boston, Mass.....	82.0	85.8 9.0	15.6	97.0	18.3		71.0	74.3 9.0	17.3	85.0	19.7		55.0	57.5 9.0	20.9	65.0	18.2

APPENDIX 14.

Exhibit showing rates and minimum on articles transported in refrigerator cars with car-mile and ton-mile earnings as compared with car-mile and ton-mile earnings on poultry, butter, eggs, and cheese, Chicago to New York.

[Distance, 904 miles via, Wabash, D., L. & W.; authority, Official Guide. Authority for rate, Wabash R. R., I. C. C. 3972.]

Commodity.	Minimum weight	Rate per 100 pounds.	Earnings per ton-mile.	Earnings per car-mile
Apples.....	24,000	36	0.0079	0.0955
Pears.....	24,000	36	.0079	.0955
Quinces.....	24,000	36	.0079	.0955
Potatoes, Oct. 1 to May 31.....	36,000	36	.0079	.1433
Potatoes, June 1 to Sept. 30.....	30,000	36	.0079	.1194
Packing house products.....	30,000	36	.0079	.1194
Cranberries.....	24,000	42	.0093	.1119
Cantaloupes.....	24,000	42	.0093	.1119
Watermelons.....	24,000	42	.0093	.1119
Bananas.....	18,000	60	.0132	.1194
Oranges.....	24,000	60	.0132	.1592
Lemons.....	24,000	60	.0132	.1592
Pineapples.....	20,000	60	.0132	.1327
Grapes.....	20,000	79	.0174	.1747
Poultry.....	15,000	90	.0199	.1493
Do.....	20,000	90	.0199	.1999
Butter and eggs.....	15,000	79	.0174	.1310
Do.....	20,000	79	.0174	.1747
Cheese.....	15,000	60	.0132	.0999
Do.....	20,000	60	.0132	.1327

¹ Actual average loading of dairy products as used in table, 43 I. C. C. 408

No. 9131.

DIMMITT-CAUDLE-SMITH LIVE STOCK COMMISSION
COMPANY ET AL.

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY ET AL.

Submitted July 16, 1918. Decided August 3, 1918.

In its original report the Commission found among other things that the maintenance of rules for the free return transportation of caretakers accompanying one-car shipments of cattle, calves, hogs, and sheep from points in Missouri to East St. Louis and National Stock Yards, Ill., on the one hand different from those applicable to St. Louis, Mo., on the other was unduly prejudicial to East St. Louis and National Stock Yards and shippers therein, and ordered the discrimination removed. Upon rehearing, *Held*: That the reasonable rule for the transportation of caretakers accompanying one-car shipments of cattle, calves, hogs, and sheep from Missouri points to East St. Louis and National Stock Yards is to provide for their free transportation to market only.

Thomas L. Philips for complainant.

C. B. Bee for Public Service Commission of Missouri.

Kenneth F. Burgess, C. S. Burg, H. G. Herbel, N. S. Brown, W. F. Dickinson, A. E. Haid, and Robert N. Nash for defendants.

SUPPLEMENTAL REPORT OF THE COMMISSION.

In the original report in this proceeding, 47 I. C. C. 287, the Commission found that defendants' rates on live stock to East St. Louis and National Stock Yards, Ill., from points in Missouri were unduly prejudicial to East St. Louis and National Stock Yards, and unduly preferential to St. Louis, Mo.; that in maintaining rules for the free transportation of caretakers accompanying one-car shipments of cattle, calves, hogs, and sheep to East St. Louis and National Stock Yards different from those applicable to St. Louis defendants subjected East St. Louis and National Stock Yards to undue prejudice and disadvantage; and that as against the intrastate caretaker rule on one-car shipments of cattle, calves, hogs, and sheep the interstate rule was just and reasonable. The discrimination found to exist was ordered removed and a reasonable scale of mileage rates on cattle was prescribed from points in Missouri to East St. Louis and National Stock Yards. The rates on horses and mules were fixed at 120 per cent of the cattle rates.

On February 6, 1918, the Public Service Commission of Missouri, hereinafter referred to as petitioner, filed a petition for rehearing. On February 11, 1918, the Commission entered an order denying this petition except in so far as it related to the caretaker rules and ordered that the case be reopened upon the question of rules and practices governing the transportation of caretakers of live stock, including horses and mules, from points in Missouri to East St. Louis and National Stock Yards, Ill. The original order remained in effect.

Prior to the effective date of the order in this case one caretaker was given free transportation to and from the St. Louis market when accompanying one car of any kind of live stock, while to East St. Louis and National Stock Yards free transportation to and from market was provided for a caretaker accompanying one-car shipments of horses and mules only. When accompanying one-car shipments of other kinds of live stock free transportation only to market was provided. On shipments of two or more cars the rules were the same. Only the rules on the one-car shipments are in issue here. The rule applicable between points in Missouri is explained on pages 318 and 319 of the original report and is the result of a Missouri statute. The rule applicable to East St. Louis and National Stock Yards will be referred to as the interstate rule. The order of the Commission required defendants to cease and desist from giving any undue and unreasonable preference or advantage to St. Louis in respect to the caretaker rule on one-car shipments of cattle, calves, hogs, and sheep, or from subjecting East St. Louis and National Stock Yards to undue and unreasonable prejudice and disadvantage. Defendants complied with the order by publishing the interstate rule for application on intrastate shipments of cattle, calves, hogs, and sheep to St. Louis, thereby providing uniform rules as between these markets.

At the rehearing petitioner, through its rate expert, took the position that the maintenance of caretaker rules on horses and mules different from those on cattle, calves, hogs, and sheep discriminated against the last-named traffic; that the part of the Commission's order fixing the rates on horses and mules at 120 per cent of the rates on cattle was defeated, as the transportation charge on a car of horses and mules is not 120 per cent of the transportation charge on a car of cattle when the return fare of the caretaker accompanying the car of cattle is added. In substantiation of this contention a statement was introduced showing that on a 23,000-pound car of cattle and a car of horses and mules of the same weight the difference in the total revenue paid by the shipper to get the car to market and the caretaker back to point of origin for a haul of 50 miles

would be \$2.66. This amount includes \$1.25 for the return fare of the caretaker. For a haul of 100 miles the net difference is \$2.56, and for hauls of 150 miles \$2.35; 200 miles \$1.67, and 300 miles 30 cents. In making this computation the mileage scale prescribed by the Commission has been used and a passenger fare of 2.5 cents per mile for the return transportation of the caretaker. If the fare of the caretaker accompanying the shipment of cattle for the return trip is not considered, or if a similar charge was imposed for caretakers of horses and mules, the rates on the latter traffic would be 120 per cent of the cattle rates. Petitioner's position disregards the fact that in fixing the rates on cattle and on horses and mules the Commission did not take into consideration the passenger fare of caretakers returning from market. In the course of the rehearing a suggestion to this effect was made, and the rate expert for the petitioner replied that the Commission on pages 319 and 320 of the original report had overruled his contention that the free transportation of caretakers is in no way aligned or connected with the rates. The conclusion referred to, however, should not be construed as a finding that the rates fixed included free transportation of caretakers, for it was only directed to the question of the Commission's jurisdiction to remove discrimination resulting from different intrastate and interstate caretaker rules.

Defendants contend and have introduced evidence to show that the present interstate caretaker rule on one-car shipments of cattle, hogs and sheep is not unreasonable and that any more liberal rule would result in a substantial loss of revenue. The Burlington Railroad operates in 14 states and the intrastate rule is only applicable on its line locally within Missouri, Minnesota, and Nebraska. Its mileage in Minnesota is negligible. In *Sioux City Live Stock Exchange v. C., St. P., M. & O. Ry. Co.*, 47 I. C. C., 279, the Commission found that the maintenance of different rules as between interstate and intrastate traffic for the free return transportation of caretakers was unduly prejudicial to interstate shippers and the discrimination was ordered removed. The Great Northern Railway and the Chicago, St. Paul, Minneapolis & Omaha Railway, the only defendants, have complied with our order by publishing the interstate rule for application on intrastate shipments from the points of origin in Minnesota complained of. By a Nebraska statute the carriers operating in that state are required to furnish free return transportation to attendants in charge of single cars of live stock. This rule as published by the carriers is under attack in No. 9758, *South St. Joseph Live Stock Exchange v. C., B. & Q. R. R. Co.*, and in No. 9928, *Kansas City Live Stock Exchange v. C., B. & Q. R. R. Co.*, as unduly prejudicial to interstate shippers. Arkansas

appears to be the only other state through which these defendants operate in which free return transportation is given to caretakers of one-car shipments of cattle, hogs, and sheep.

Defendants contend that if the Commission orders that free transportation from market be given the caretaker accompanying one-car shipments of cattle, hogs and sheep to National Stock Yards or East St. Louis, Ill., a discrimination would be created against other important markets at which the interstate rule applies. It was found in the original report in this case that the interstate rule was the common rule throughout this territory. At page 320 the report states:

Substantially the same rule regarding the return transportation of caretakers accompanying one-car shipments of live stock to market as now applies from Missouri points to East St. Louis also applies from Missouri points to Kansas City, St. Joseph, and Chicago; from Iowa points to St. Louis-East St. Louis, Kansas City, St. Joseph, and Chicago; from Illinois points to Chicago, and East St. Louis; from Kansas and Nebraska points to Kansas City, St. Joseph, Omaha, Chicago, and East St. Louis; and from Oklahoma and points in other southwestern states to Kansas City, St. Joseph, Wichita, and East St. Louis.

Defendants assert that the more liberal the privilege the greater the number of caretakers they will be required to transport and consequently the liability for their injuries will be increased. The Burlington shows that its actual disbursements because of injuries to or deaths of caretakers of live stock during the year 1917 amounted to \$112,527.32. This was 1.7 per cent of the total revenue on live stock traffic. It is also stated that at present it is difficult to police the issuance of transportation for caretakers, as it has been discovered that shipments of live stock will be split up in order that additional free transportation may be secured.

Certain of the defendants have introduced a series of exhibits to show the extent to which the privilege of free transportation of caretakers on one-car shipments is availed of and the value of the transportation computed on the basis of the actual passenger fares. The statement below shows for the Burlington Railroad, the Missouri Pacific Railroad, and the Wabash Railway, the ratio of one-car shipments of cattle, hogs, and sheep to the total number of cars of this traffic moving to St. Louis, East St. Louis, and National Stock Yards, the number of passes issued for return transportation from St. Louis, and the ratio of those cars to the total number of cars, and to the total number of one-car shipments. The computations of the Burlington and the Wabash are for the calendar year 1917, while those of the Missouri Pacific are for the alternate months of the year 1917, beginning with January.

From stations in Missouri.	To St. Louis.			To East St. Louis and National Stock Yards.		
	Burlington.	Missouri Pacific.	Wabash.	Burlington.	Missouri Pacific.	Wabash.
Total number straight or mixed carloads cattle, hogs, and sheep.....	674	828	1,589	3,422	2,641	3,769
Number one-car shipments.....	550	642	899	2,906	1,603	2,179
Percentage one-car shipments to total number cars.....	81.6	77.5	56.6	84.9	60.7	58
Number return passes issued on one-car shipments.....	189	252	368	.....	.....	.....
Percentage of cars on which return transportation issued to total number of cars..	28	30.4	23.1	.....	.....	.....
Percentage of cars on which return transportation issued to total number of one-car shipments.....	34.4	39.2	40.9	.....	.....	.....

It will be noted that for these three defendants the cars on which free transportation was issued averaged 38.1 per cent of the total number of one-car shipments and 27.1 per cent of the total number of cars received. The Burlington refers to figures introduced by it in the *South St. Joseph Live Stock Exchange Case* and the *Kansas City Live Stock Exchange Case*, supra, which show that out of 16,381 cars of cattle, hogs, and sheep moving from points in Nebraska to South Omaha during the year 1916, return transportation was issued on 34.3 per cent of them. This is slightly higher than the average percentage shown for Missouri. All of these figures, however, are conclusive that free return transportation is furnished on a substantial number of one-car shipments. The Burlington shows that the actual value of the 189 return passes issued at St. Louis was \$630.85, figured on the basis of 2 cents per mile; and \$772.73 under the fares in effect on the date of the rehearing. The corresponding figures for the 252 passes issued on the Missouri Pacific were \$860.60 and \$1,084.90; and for the 368 passes issued on the Wabash \$1,149.58 and \$1,431.51.

The Burlington states that had the intrastate rule been in force over its entire system and the ratio of passes issued on one-car shipments of cattle, hogs, and sheep to the total number of cars handled been the same as found to exist from Missouri points to St. Louis, for the fiscal year 1916, the actual value of the return transportation, computed on the basis of 2.4 cents per mile, would have amounted to \$267,133.90. This figure is obtained by using 28 per cent of its loaded car mileage of cattle, hogs, and sheep for that year to secure the number of miles the caretakers would travel from the market, and applying a passenger fare of 2.4 cents per mile.

A statement with reference to horses and mules similar to that on cattle, hogs, and sheep has been introduced by the Missouri Pacific and Wabash. The table below shows the total number of

carloads of horses and mules moving from points in Missouri to St. Louis and to National Stock Yards; the number of one-car shipments; the passes issued for the return transportation; the ratio of the cars upon which return transportation issued to the total number of cars; and the ratio of these cars to the total number of one-car shipments. The figures of the Wabash are for the calendar year 1917, while those of the Missouri Pacific are for alternate months of 1917, beginning with January.

From stations in Missouri.	To St. Louis.		To National Stock Yards.	
	Missouri Pacific.	Wabash.	Missouri Pacific.	Wabash.
Total number straight or mixed carloads horses and mules.....	34	291	205	683
Number one-car shipments.....	23	112	168	559
Number passes issued one-car shipments.....	13	21	76	168
Percentage cars on which return transportation issued to total number of cars.....	38.2	7.2	37.1	24.6
Percentage cars on which return transportation issued to total number one-car shipments.....	56.2	18.7	45.2	30

It will be noted that for these two defendants the average percentage of the cars of horses and mules on which return transportation issued to the total number of cars moving to both St. Louis and National Stock Yards over the lines of these carriers was 26.7 per cent. This closely approximates the average on cattle, hogs, and sheep moving to St. Louis, which was 27.1 per cent.

The practice of issuing free transportation in both directions for caretakers accompanying one-car shipments of horses and mules is quite general in western trunk line territory. The witnesses on rehearing were unable to give any definite information as to why this rule was originally established different from that on other kinds of live stock. It appears that the rule is one of long standing, and that one of the influences underlying its establishment was that horses and mules were not, as a rule, sold on the market in carload lots; and that shippers desired to be present at the market to personally negotiate the sales.

There is no competition between cattle, calves, hogs, and sheep, on the one hand, and horses and mules, on the other, and the more liberal caretaker rule with reference to the latter traffic does not in any way unduly prejudice the shipper of cattle, hogs, and sheep. While there is no sufficient justification of record for maintaining caretaker rules on horses and mules different from those on other kinds of live stock, this fact alone is not sufficient to warrant a finding of undue prejudice or that the rule applicable on horses and mules is the reasonable one to be applied on all live stock. The horses and

mules traffic is only a small part of the total live-stock tonnage. The Burlington shows that for 1917 the number of cars of horses and mules moving over its system was only 8.5 per cent of the total number of cars of live stock handled.

The Commission finds that the reasonable rule for the transportation of caretakers accompanying one-car shipments of cattle, calves, hogs, and sheep to East St. Louis and National Stock Yards is the free transportation of the caretaker to market only.

DANIELS, *Chairman*:

To the foregoing report of the examiner no exceptions were filed; nor was there any request for argument. It will be noted that the prevailing practice in the territory here involved is the determinant of the finding of the report. Such finding is not to prejudice the propriety of the rule affecting caretakers in other territories where it may be shown that the prevailing practice is different from what it is here.

51 I. C. C.

No. 9569.
DIAMOND LUMBER COMPANY
v.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY
COMPANY.

Submitted June 14, 1918. Decided August 10, 1918.

1. The complainant's allegations of unreasonableness and undue preference in the distribution of defendant's logging cars on its Superior division during times of car shortage held not to be sustained.
2. The situation as to coal cars differentiated and conclusion reached that the distribution of these logging cars by fixed rules would be impracticable, and that the discretion of the chief train dispatcher or other employee of the defendant must finally govern upon the facts of this case.
3. The record affords no lawful basis for requiring defendant to equip flat cars engaged in the logging traffic on its Superior division with bunks and chains, or with patented stakes for securing the load.
4. Complaint dismissed.

Cady and Strehlow for complainant.

J. N. Davis for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

The following is substantially the report proposed by the examiner:

The complaint here is of an alleged shortage of cars for the transportation of logs from the complainant's timber tract at Camp Tolfree, Mich., to its sawmill at Green Bay, Wis., and the prayer is for an order requiring it to be furnished with its alleged minimum requirements of from 12 to 15 cars a day.

Camp Tolfree is situated on the Superior division of the defendant, in northwestern Michigan, 13.2 miles southwest of Ontonagon, Mich., which is on the south shore of Lake Superior. The defendant operates by lease over the line of the Ontonagon Railroad, a logging road, for the 6.8 miles from Ontonagon to Green, thence over its own rails, constructed under contract with the complainant, to Camp Tolfree. The complainant operates a logging road from Camp Tolfree to the immediate scene of its logging operations in the woods, a distance of about 14½ miles. It owns two engines and cars are furnished by the

defendant. The distance from Camp Tolfree to Green Bay is 225 miles, over the continuous line of the defendant, upon which the complainant is wholly dependent for this transportation.

As incidental to the main complaint of alleged car shortage for its own shipments, the complainant alleges that the supply of logging cars for all shippers on the defendant's Superior division is inadequate; that this division is being discriminated against in its car supply; that cars are inadequately distributed in times of car shortage; and that the situation is aggravated in times of shortage by delays and tying up of equipment in transit incident to operating deficiencies of the defendant. The average time elapsing from the completion of loading at Camp Tolfree to the placing of the car at the complainant's Green Bay mill for unloading is said by the complainant to have been 4.54 days in 1913, 4.15 days in 1914, 4.29 days in 1915, and 4.54 days in 1916, an average of 4.38 days for the four years.

It is also alleged that as a result of this failure to receive needed cars the complainant has at different times been required to shut down its mill at Green Bay, at a loss of profits and at the expense of upkeep of fires and maintenance of help, which are nevertheless required. The complainant states that its mill was shut down, mainly for lack of cars, for 20 days in 1911, 30 in 1912, 35 in 1913, 25 in 1914, 25 in 1915, 39 in 1916, and 25 during the first four months of 1917.

An undue preference of the Spies-Thompson Lumber Company in the furnishing of cars during the first 12 days of February, 1917, is alleged. The Spies-Thompson Company is a competitor of the complainant, and ships its logs from a point on the Superior division about 3 miles from Camp Tolfree to its mill at Menominee, Mich., on the line of the defendant. Complainant testified that its daily sawing capacity is from 75,000 to 110,000 feet. The Spies-Thompson Company has a daily capacity of from 75,000 to 78,000, apparently lumber measure, and on soft wood it will go as high as 90,000 feet.

The complainant has experienced its alleged shortage of equipment intermittently over most of the nine-year period of its shipment from Camp Tolfree, but the situation has become more acute during the years 1916 and 1917, especially during the latter. The trouble comes principally during the winter months, when logging operations are most active and transportation conditions hardest in this region of cold weather and heavy snows.

The position of the complainant is that it operates its mill and lumber camps the year round, at a fairly even demand for cars, and that the defendant should be required to procure sufficient additional

equipment to satisfy at all times the reasonable demands from complainant and the 40 or more other shippers of logs on this division, and more equitably to distribute the cars in times of shortage.

There are 18 or 20 shippers on this division who, like the complainant, saw their own logs, and whose demands for log equipment are fairly constant the year round. The others are mainly jobbers who ship to manufacturers of lumber, including the complainant, and whose demands for cars are intermittent and for short periods, principally during the winter months, when the general demand for cars is heaviest.

The complainant suggests that it is unfair to accord these jobbers during their short period of shipment, usually during the most trying season, an equality in car assignment with the shippers who saw their own logs, whose requirements are constant and whose continuous expense of investment and upkeep is heavy, and that the annual requirements of both classes of shippers should be taken into account.

There is a further contention that the complainant has been discriminated against in the furnishing of cars to jobbers for shipment of logs to its mill.

The defendant denies that it lacks sufficient cars to meet the average demands of shippers on this division, and states that its lack of adequate equipment during certain winter periods is offset by its surplus of cars during the summer months, which must stand idle or be removed temporarily to other parts of its system.

The defendant denies that we have jurisdiction over the complaint in so far as it relates to the physical operation of trains and the sufficiency of car supply.

The defendant further charges a lack of cooperation on the part of the complainant in the shipping by the latter, during the winter months when the car situation is most serious, of hemlock logs, which are peeled for their bark, and which, the defendant contends, are not needed for peeling until the spring.

At the present time there is no established rule for the distribution of these cars, which is left to the judgment of the chief train dispatcher of the division at Channing, Mich., between Camp Tolfree and Green Bay, based upon reports of agents and conductors as to shippers' requirements.

The cars used in this service are the ordinary flat cars equipped with "bunks and chains," or with stakes and wire, for holding on the load. The bunk and chain arrangement consists of steel rails or wooden timbers placed permanently crosswise of the floor of the car and projecting about a foot over each side, to the ends of which are

attached chains for lapping over and binding on the first tier or two of longitudinally placed logs, so that other tiers can similarly be placed on top without spreading of the first tiers and shifting of the load.

The defendant has only a limited number of cars equipped with bunks and chains, and the number becomes smaller every year as the cars become unfit for service. None of its cars has been so equipped since 1911, when the federal safety appliance act required the use of hand brakes on all cars. Most of its cars in this service are only 33 or 34 feet in length, which will not permit of the necessary space between the end of the load and the brake wheel when the cars are loaded with two end-to-end placements of the usual 16-foot logs.

The equipping of cars with bunks and chains practically confines them to the logging traffic. The appliances can be removed, but at a cost in labor and inconvenience warranted only by a lengthy withdrawal of the cars from the logging service. The defendant intimates, but does not definitely state, that the cost of equipping the ordinary flat car with bunks and chains would be about \$35. The complainant testifies that the cost of staking and wiring a car would be about \$4.50, and that the process would have to be repeated with each shipment.

The complainant has always refused, and now refuses, to accept cars not equipped with bunks and chains, citing in justification a clause of the contract under which the defendant's extension from Green to Camp Tolfree was built, which provides that the defendant will furnish "all necessary cars equipped with suitable fastenings, as are generally used for logging purposes."

All other shippers of logs on this division will accept a reasonable proportion of cars not so equipped, and buy their own stakes and wire. The Spies-Thompson Company, the alleged recipient of preferential treatment during the first 12 days of February, 1917, has recently expended about a thousand dollars for chains, to take the place of wire, which it ships back to Camp Tolfree from Menominee after every shipment, at the prevailing rate of freight. In addition it pays 5 or 6 cents apiece for stakes.

Referring to the alleged preference of the Spies-Thompson Company during the first 12 days of February, 1917, an exhibit taken from the records of the defendant and introduced in evidence by complainant shows that 70 cars were assigned to that company and 45 to the complainant during that period, instead of the 60 and 37, respectively, alleged in the petition. The figures given by the defendant for the entire months of February, March, and April, 1917, were as follows:

	Spies-Thompson Co.	Complainant.
February.....	191	156
March.....	217	166
April.....	183	226
Total.....	591	548

These figures approximately correspond to the 585 for the Spies-Thompson Company and the 549 for the complainant for that period, as testified to by their respective representatives at the hearing. This testimony further shows that in January, 1917, 251 cars were assigned to the Spies-Thompson Company and 211 cars to the complainant, and that in May the Spies-Thompson Company received 177 cars, the number received by the complainant during that month not being stated.

The record indicates that the preponderance in the number of cars furnished fluctuates between these two shippers from day to day, thereby making impracticable a forceful comparison for a limited period of time. For example, there would seem to be no more reason for selecting for comparative purposes the first 12 days of February than there would be for selecting the month of April, when the advantage was with the complainant; and the comparison is of dissimilar things, even over a more extended period, in view of the refusal of the complainant and the willingness of the Spies-Thompson Company to accept cars not equipped with bunks and chains.

It appears from the testimony of its president that the Spies-Thompson Company felt during the winter of 1916-17 that it was being discriminated against in favor of other shippers, the same as the complainant felt that it was being discriminated against in favor of the Spies-Thompson Company, and the record as a whole indicates that the complaint of car shortage was quite general during that period.

The charge of discrimination in the furnishing of cars to jobbers for shipment to the complainant is based in part upon a letter written to the complainant by a jobber at Plato, Mich., in April, 1917, stating that the jobber had been advised by the defendant "that we are not to load any more logs for the Diamond Lumber Co., as they would not haul them, stating that you were blocked with loads." From other correspondence of record it seems fairly to appear that this action was taken under a misapprehension on the part of the defendant as to the state of congestion at that time at the complainant's receiving yard at Green Bay.

Upon the whole we conclude that the charge of undue prejudice to the complainant, either in favor of the Spies-Thompson Company

or in the furnishing of cars to jobbers for shipment to the complainant, has not been sustained. We shall therefore approach the question of the adequacy of the defendant's supply of cars on its Superior division, and the basis of their distribution, as one affecting alike all shippers, with no undue preference established as to any one of them.

Estimates given by the defendants, based upon car checks on different dates, of the number of cars on this division, both specially equipped and plain, are as follows:

A. Equipped with bunks and chains. B. Equipped with racks. C. Plain flat. D. Total.

	A.	B.	C.	D.
Oct. 27, 1914.....				409
Dec. 10, 1914.....	405		170	575
Jan. 25, 1915.....	499		218	717
Mar. 29, 1915.....	367		311	678
June 10, 1915.....	300		50	350
Sept. 14, 1915.....	390	36	49	475
Dec. 21, 1915.....	410	20	55	485
Feb. 7, 1916.....	565	14	243	822
July 31, 1916.....	376	26	11	413
Dec. 5, 1916.....	442		43	485
Jan. 17, 1917.....	465		133	598
May 19, 1917.....	368	29	151	548
April-May, 1917.....				548

¹ 36 of these were foreign cars.

² Including all cars east of Mobridge, S. Dak.

These figures can not mean a great deal in the definite determination of the number of cars needed for this traffic, when all the conditions and contentions presented by this record are considered. They do show that the defendant has a substantial number of cars in this service, and that it has not failed generally in its duty as a common carrier to transport in accordance with its tariffs. How many cars would be adequate to meet the reasonable demands of shippers, during periods of both light and heavy demands, is difficult of determination.

The complainant estimates, taking into account the previously mentioned 4.38 days average time in transit, and allowing 2 days free time each for loading and unloading, that to meet alone its request for 15 cars a day the defendant should have in this service 191 cars. A similar estimate for the Spies-Thompson Company would bring the total for these two shippers only up to a very substantial proportion of the present total supply of cars on this division as shown by the above table.

The chief train dispatcher, who distributes the cars, testified that at the time of the hearing, June 1, 1917, the daily demands of all shippers on this division aggregated about 100 cars. Based on this statement, in connection with the testimony of the division superintendent that he found by a recent check that only about 10 per cent

of the total car supply of the division was being released daily for loading, the complainant suggests that at least a thousand cars should be placed in the service of this traffic.

These estimates of the complainant are apparently based upon an even demand for cars each day the year round, without regard to the periods of light shipment during which the defendant asserts that there is already a surplus of cars.

The number of available cars for this traffic is said by the defendant to be materially affected by the operating conditions peculiar to the Superior division. It is stated that at best the operation of logging trains on this division is attended with difficulty. Three crews are successively employed between Camp Tolfree and Green Bay, and the normal slow speed of the logging train is further reduced or entirely interrupted during the frequent periods of heavy snows.

The tendency to car shortage due to the detention of equipment en route is at times accentuated by the delay to equipment at the point of origin or destination. This sometimes results from the failure of the complainant's logging train to make direct connection with the defendant's outgoing train at Camp Tolfree, which does not run on strict schedule time between Ontonagon and Camp Tolfree, and sometimes from a congestion of loaded cars at the complainant's mill at Green Bay. Frequently, for example, on Monday, due to the defendant clearing its tracks on Sunday when the complainant's mill is idle, the complainant will receive at its mill more cars than it can conveniently unload without delay. Later in the week this condition will frequently change to a shortage of loaded cars at the complainant's mill.

The question further arises whether any present shortage of cars is only temporary and due to abnormal conditions. The Spies-Thompson Company appears to have had no cause for complaint during any but the past two of its four years of operation on this division, and no other complaint of prior shortage than that of the complainant is brought to our attention upon this record. The president of the Spies-Thompson Company testifying in June, 1917, said:

I do not think these questions have come up—of course, there has been more or less of a shortage of cars in the winter, because everybody is shipping. the jobbers and everybody else, but the mills have always run, and I do not know of any of them being shut down. But I have not felt the shortage of logging cars until the last year and a half or two years.

This witness further testified that this condition of car shortage occurred principally during the winter, and with respect to the sufficiency of the car supply, said: "I do not think they have enough hardly for a continuous operation."

It appears from the testimony of the defendant that operating conditions on the Superior division during the winter of 1916-17 were abnormal, both in unusual weather conditions, which affected the progress and efficiency of its locomotives, and in the shortage of fuel coal, and that the shortage of cars extended to all classes of equipment.

The record seems to indicate that if the winters of 1915-16, 1916-17 are to be accepted as a controlling guide for the future the defendant's supply of cars for this traffic should be increased. But we do not feel warranted upon the facts of this record to make a definite finding and order in that respect, even if we have that power, which, in view of *United States v. Pennsylvania R. R. Co.*, 242 U. S., 208, and *R. R. Commissioners of Florida v. Southern Express Co.*, 44 I. C. C., 645, seems at least doubtful. The record fails to sustain the allegation of discrimination against the Superior division in the matter of car supply.

The question of how properly to distribute the defendant's present supply of cars on this division was the subject of considerable discussion at the hearing.

As to a basis for distribution that would be an improvement over the present method, no one appeared to have evolved any definite plan. The difficulties encountered were pointed out, and the situation was differentiated from that affecting the distribution of coal cars to definitely located mines of known capacity and steady daily shipment in that amount.

It would appear that a plan similar to that for mine distribution might possibly be worked out here if all the shippers were also manufacturers of lumber of steady and ascertainable output, whose daily demands for cars were continuous and fairly uniform throughout the year. But the situation in that respect is complicated by the presence of the jobbers, who ship intermittently for short periods and may appear as shippers at any time, especially during the more propitious logging period of the winter months, when everyone is asking for cars.

All parties seemed to agree that no plan could be devised that would not finally leave, as now, considerable discretion to the chief train dispatcher or other employee of the defendant in the distribution of equipment.

In response to our request made at the hearing for definite suggestions in the briefs as to the proper basis of car distribution the attorney for the complainant in his brief "personally" suggests a tentative set of rules "upon which to form a basis for an intelligent and equitable method of car allotment," in substance as follows:

Each manufacturer on the Superior division shall be assigned such proportion of the available car supply as his requirements, determined by the average 10-hour day cut on actually run time during January, February, July, and August of the preceding year bears to the total requirements of all shippers, including jobbers; this rating to be doubled upon 90 days' notice to the carrier of the manufacturer's intention to run his mill night and day; and to be based upon the average cut per 10-hour day for the first week, of any new plant that may be installed, until the expiration of six months, when the rating will be based upon the average 10-hour day cut for the first and sixth months, until sufficient time elapses to operate under the rule as first above set out; the rating of all shippers to be conditioned upon their having furnished the superintendent of the Superior division "with accurate information as to all the facts pertaining to his business necessary to the application and enforcement of the foregoing rules."

The cars furnished to a jobber for shipment to a manufacturer shall be deducted from the quota of such manufacturer.

The jobber shall receive, in case of controversy between himself and his consignee manufacturer over cars for shipments to such manufacturer, cars "in such proportion as the quantity sold by the jobber to the manufacturer bears to the total requirements of such manufacturer figured on an annual basis.

"Jobbers shipping to points off the division or to others than manufacturers shall be assigned cars in the proportion that their total operations, per annum, bear to the annual requirements of manufacturers on said division who ship throughout the year.

"If any mill or part of a mill is shut down for any reason other than for lack of logs with which to operate, the requirements of such mill shall be deducted from the total requirements, if the shut down is total, or if the shut down is only partial, then the determined requirements shall be proportionally deducted.

"When any mill is shut down for any reason other than lack of logs, its requirements shall be considered as being suspended during such shut down.

"When a manufacturer has timber holdings on the lines of other carriers which such manufacturer is engaged in logging, then the requirements of such manufacturer for cars on this division shall be reduced in proportion to the relation which his logging operations on the lines of such other carriers bears to his total logging operations.

"When a manufacturer buys logs on the line of some other carrier, because of car shortage, the shipment of such purchases shall not be construed to reduce his requirements for the purposes of car distribution hereunder."

We deem it unnecessary to enter upon a detailed analysis of these proposed rules. Even assuming them to be reasonable as a whole, they involve in their application a preliminary determination by the defendant of questions of fact regarding shippers' operations which militates against that definiteness and certainty in tariff rules and in their application required by the act, and makes doubtful their practical application.

Reasonable regard ought of course to be given to the needs of the complainant and other manufacturers on this division who ship continuously throughout the year, but this does not mean that the jobbers can lawfully be denied their reasonable proportion of available cars when ready to ship, whether continuously or at intervals.

The issue here is similar to that in *Railroad Commissioners of Iowa v. C., R. I. & P. Ry. Co.*, 29 I. C. C., 396, where one class of Iowa shippers desired cars distributed in times of car shortage according to grain in elevators ready to move, and another class according to past requirements, and we observed that "the whole situation is one which it does not seem to us can be dealt with by any fixed, arbitrary, and inelastic regulation," and "that the final decision of the station agent must be the determinative word in the solution of these problems in the numerous emergency cases that will inevitably arise in actual practice." The track buyer of grain, the recently started elevator, and the individual new shipper were there referred to as presenting the same problem in any rigid rule based upon past performances as the jobbers present here. In *Farmer's Elevator Co. v. C., M. & St. P. Ry.*, 47 I. C. C., 475, 482, we referred to our report in *Railroad Commissioners of Iowa v. C., R. I. & P. Ry. Co.*, *supra*, and said:

* * * In that case we permitted the carriers to leave the method of distributing cars largely to the discretion of the local agents. The record in the instant case shows that this discretion when exercised by the local agents leads to unjust discrimination and it appears unwise to leave this matter to their discretion.

We are convinced under the circumstances disclosed of record here that it would be impossible to formulate a set of fixed rules which would be workable and it is necessary therefore that some one should exercise a discretion in the allotment of these cars.

We further conclude that we should not, in dealing with this question of distribution, differentiate between plain flat cars and cars equipped with bunks and chains or patented stakes. The record affords no lawful basis for requiring the defendant to equip its cars with bunks and chains or patented stakes. In *Southwestern Missouri Millers' Club v. St. L. & S. F. R. R. Co.*, 26 I. C. C., 245, we observed:

Generally when it is necessary to secure upon the car freight which the shipper loads, it is the duty of the shipper to provide the necessary material and do the work.

And in *National Lumber Dealers' Asso. v. A. C. L. R. R. Co.*, 14 I. C. C., 154, we said:

Staking the load is in reality part of the operation of loading, and in the case of lumber it appears that as a practical matter at least one side of the car must be staked before the load can be placed. * * * The lumber business has been conducted for many years with reference to the custom of loading and staking carload shipments by shippers and is now firmly established on that basis.

The fact that the bunk and chain arrangement is a rather permanent fixture does not affect the principles announced in those cases.

From the record as a whole we gain the impression that, as contended by the defendant, a considerable part of the complainant's

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difficulty arises from its refusal to accept any but specially equipped cars, in accordance with the terms of its previously mentioned contract with the defendant. We can not enforce the provisions of this contract in any event, nor can the courts if to do so will result in discriminations in favor of the complainant prohibited by the act. Upon the whole the complainant appears to have received in the past a fair share of the total number of available cars on this division, considering its refusal to accept any but specially equipped cars.

HALL, *Commissioner*:

In this proceeding we are asked, among other things, to direct the publication of rules of car distribution which would better the present practices of defendant. In distribution of cars to logging camps served by its Superior division defendant encounters difficulties, seasonal and other, not only because of the sporadic demands of intermittent shippers, jobbers, and the like, who can ship only in the season of abundant snow, but also because the mills vary in sawing capacity according to the kind of product, receive their supply of logs from various sources, including logging camps on other divisions or lines, with resultant fluctuation in the demand for cars, and hence the ability to load and ship is not gauged by the daily needs of the mill or its ability to handle the logs after arrival. Rules applicable at the mills might not be adequate at the logging camps, and vice versa. Complainant seeks a percentage distribution among the logging camps served by the Superior division based upon the sawing capacity of the mills. If we were to consider the establishment of rules such as apply to the distribution of cars among coal mines or grain elevators, we should look at the loading points rather than the mills in laying a basis for allotment.

Defendant's practice, as explained by its witness, is that the chief train dispatcher, who is charged with distribution, subject to directions from the superintendent of the division in times of car shortage, allots each day the available supply of cars according to the demands made, due regard being had for such cars as a shipper may have remaining from previous allotments, and such general knowledge of the shipper's needs as he may possess.

During periods of car shortage there may have been at times inequalities in the distribution of cars on the Superior division, but it is fairly deducible from the record that defendant has endeavored justly and equitably to distribute the available supply and to adjust such inequalities when brought to its attention. Since the filing of the complaint we have been invested with statutory authority to make such just and reasonable directions with respect to car service as will best promote this service in the interest of the public and the com-

merce of the people, and the operation of defendant has been taken over as a war measure by the federal government. Thus any inequality in current car service which may develop can find speedy cure. The present record does not afford the basis for prescribing fixed rules for distribution of logging cars on defendant's Superior division and under all the circumstances disclosed we are of opinion that such rules would fail in practical application.

The exceptions filed by complainant to the report proposed by the examiner have been carefully reviewed and considered. For the most part they go to the weight of evidence and to the conclusions. The findings proposed are fully supported by the evidence, and they are approved and adopted as a part of this report.

An order will be entered dismissing the complaint.

51 I. C. C.

No. 9988.

WALTER A. ZELNICKER SUPPLY COMPANY

v.

CHICAGO & NORTH WESTERN RAILWAY COMPANY
ET AL.

Submitted February 14, 1918. Decided October 2, 1918.

Rate legally applicable on old rails, in carloads, from Pentoga, Mich., to East St. Louis, Ill., not shown to have been unreasonable. Complaint dismissed.

John D. Fidler for complainant.

Ed Keane for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

The complainant alleges that the rate charged by defendants on a carload of old rails, shipped July 2, 1917, from Pentoga, Mich., to East St. Louis, Ill., was unreasonable to the extent that it exceeded the aggregate of the intermediate rates to and from Chicago, Ill., and prays for reparation and the establishment of a reasonable rate. Rates are stated in cents per 100 pounds except as otherwise noted.

The shipment was delivered to the Chicago & North Western Railway at Pentoga, consigned to East St. Louis, and routed "C&NW-C&A Ry." No rate or junction point through which the shipment should move was inserted in the bill of lading. The initial carrier routed the shipment over its line to Peoria, Ill., thence over the Chicago & Alton Railroad. Charges were collected in the sum of \$143, at the joint class D rate of 25 cents, governed by the western classification, based on a weight of 57,200 pounds. Iron and steel rails are rated fifth class in the western classification, and scrap iron having value for remelting purposes only, class D. The shipment was billed and described by complainant as "old rails," and the fifth-class rate of 32 cents was therefore legally applicable. There is an outstanding undercharge of \$40.04. The complaint was filed under the misapprehension that the shipment moved through Chicago. The 32-cent rate also applied by way of Chicago, over which route it exceeded the combination of intermediate rates of \$4.03 per long ton, composed of \$2.35 to Chicago and \$1.68 beyond. Effective April

30, 1918, a joint commodity rate of \$4.03 per long ton was established over defendants' lines through Chicago or Peoria.

We have repeatedly held that no presumption of unreasonableness attaches to a joint through rate applicable over a particular route because of the fact that the intermediate rates over another route would make a lower charge.

We find that the rate legally applicable is not shown to have been unreasonable. An order dismissing the complaint will be entered.

No. 8614.

MARTIN BROKERAGE COMPANY ET AL.

v.

SOUTHERN PACIFIC COMPANY ET AL.

Submitted November 6, 1916, Decided October 2, 1918.

Rate on celery, in carloads, from Antioch, Cal., to Portland, Oreg., found to have been justified, but the minimum weight of 24,000 pounds applied on certain shipments held to have been unreasonable to the extent that it exceeded 20,000 pounds. Reparation awarded.

C. M. Hodges for complainant.

Ben. C. Dey for Southern Pacific Company and Atchison, Topeka & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL AND ANDERSON.

BY DIVISION 3:

The complaint in this case was filed January 17, 1916, by the Martin Brokerage Company, successor in interest to L. S. Martin & Company, United Brokers Company, and Pearson-Ryan Company, successor in interest to Pearson-Page Company, corporations, engaged in the fruit business at Portland, Oreg., on behalf of certain named wholesale dealers in fruits and produce at that point. It is alleged that the charges collected on numerous carloads of celery shipped from Antioch, Cal., to Portland and East Portland, Oreg., were unreasonable, unjustly discriminatory, and unduly prejudicial. Reparation is asked on seven shipments which were delivered, one

on January 15, 1913, and the remainder between November 17 and December 29, 1913, and on 34 shipments which were delivered between November 27, 1913, and March 3, 1914. A claim covering six of the seven carloads first mentioned was presented to the Commission informally November 9, 1915. The shipment delivered January 15, 1913, is barred. A claim covering the 34 shipments was presented to the Commission informally January 15, 1916, and all those shipments which were delivered prior to January 16, 1914, are also barred. Rates are stated in cents per 100 pounds unless otherwise noted.

The shipments for consideration moved over the Atchison, Topeka & Santa Fe Railway to Stockton, Cal., and beyond over the line of the Southern Pacific Company. Charges were collected thereon at a combination rate of 40 cents, composed of the class C rate of 5 cents, minimum 20,000 pounds, to Stockton and a commodity rate of 35 cents beyond, subject to a minimum of 24,000 pounds on the shipments which moved prior to December 24, 1913, and 20,000 pounds on the subsequent shipments. On March 19, 1914, a commodity rate of 35 cents, minimum 20,000 pounds, was established on this traffic over the route the shipments moved. It is contended for complainants that the charges collected were unreasonable to the extent that they exceeded those that would have accrued at the subsequently established rate and minimum weight. For defendants it is denied that the charges collected were unreasonable; and it is asserted that the component legally applicable from Antioch to Stockton was \$1.15 per net ton, equal to 5.75 cents per 100 pounds, and that the shipments were therefore undercharged three-fourths cent per 100 pounds.

Prior to November 20, 1912, Atchison, Topeka & Santa Fe tariff I. C. C. 5857 named a specific commodity rate of \$1.15 per net ton on fresh vegetables, in carloads, from Oakland, Cal., Antioch, and other points to Stockton and other destinations. On that date the rate from Antioch to Stockton was canceled, the item canceling it showing a reduction symbol and the notation "class rates apply." Under exceptions to the western classification, which governs, fresh vegetables from Antioch to Stockton were rated class C. The class C rate from Antioch to Stockton was 5 cents. The commodity rate of \$1.15 per net ton from Oakland to Stockton, from and to which Antioch is intermediate, remained in effect. It is contended for defendants that under an intermediate application clause the \$1.15 rate from Oakland to Stockton became applicable on this traffic from Antioch to Stockton. To this contention we are unable to accede. The intermediate application clause in the original tariff was territorially

limited so as not to cover traffic from Antioch to Stockton. On February 28, 1913, the intermediate application clause was amended to read as follows:

At directly intermediate points on the same line in the territory covered by this tariff, from which no rates are shown, the rates named from the next more distant station on the same line will apply.

Rates were shown in the tariff from Antioch, and the intermediate application clause was therefore inapplicable on traffic from Antioch to Stockton. We find that the 5-cent factor applied from Antioch to Stockton was legally applicable to these shipments.

When the shipments moved, and for a long period prior thereto, the Southern Pacific maintained a rate over its line from Antioch to Portland of 35 cents. The combination rate applicable over the route of movement had also been in effect for some time prior to the movement, except for a brief period from July 8 to October 30, 1913, when a rate applied over that route equivalent to 38.75 cents, composed of 5 cents to Stockton and the class C rate of 33.75 cents beyond. Shortly prior to the time of movement a rate of 48 cents applied on celery, in carloads, by way of defendants' lines from Antioch to Seattle, Wash., and during the period of movement a rate of 55 cents. The lines north of Portland received their local rate of 20 cents as their division of these joint rates. For the haul from Antioch to Portland defendants' divisions were 28 cents out of the 48-cent rate and 35 cents out of the 55-cent rate. It is therefore contended that the rate charged was unreasonable to the extent that it exceeded 35 cents. The division received out of joint rates to farther distant points is not the proper measure of the rate to an intermediate point. The rate over the route of movement from Antioch to Portland, 760 miles, yielded 10.5 mills per ton-mile; the 55-cent rate from Antioch to Seattle, 945 miles, 11.6 mills per ton-mile. The 5-cent component from Antioch to Stockton, based on the minimum of 20,000 pounds, yielded \$10 per car for a haul of 31 miles. It included switching at both Antioch and Stockton, and refrigerator equipment was required to accommodate the shipments.

Defendants' witness testified that there are regular and frequent sailings maintained by boat lines from Antioch, Stockton, and vicinity to Portland and Seattle; that 75 per cent of the fruit and a large volume of vegetables from and to these points move by water; and that the rail rates are low by reason of the water competition.

We have frequently held that the existence of a lower rate over another route and the subsequent establishment of that rate over the route of movement do not of themselves warrant a condemna-

tion of the rate charged. When the shipments moved complainants could have availed themselves of the 35-cent rate by forwarding the shipments over the Southern Pacific.

As stated, on the shipments which moved prior to December 23, 1913, charges were collected for the movement from Stockton to Portland on basis of a rate of 35 cents and a minimum of 24,000 pounds. Of the six shipments which moved prior to that date, four weighed 23,200, 22,646, 23,680, and 23,520 pounds, respectively, and two 24,000 pounds each. Prior to October 30, 1913, the minimum on fresh vegetables from Stockton to Portland was 20,000 pounds. On that date it was increased to 24,000 pounds, which remained in effect until December 24, 1913, when it was reduced to 20,000 pounds. No justification for the increased minimum was offered.

We find that the rate assailed has been justified, but that the minimum weight of 24,000 pounds applied on the shipments which moved prior to December 24, 1913, was unreasonable to the extent that it exceeded 20,000 pounds.

The wholesale dealers on whose behalf the complaint was filed were not parties to the transportation records. It is clear from the record, and we so find, that on the shipments for consideration complainants Martin Brokerage Company and Pearson-Ryan Company, or their predecessors, and United Brokers Company, who were the consignees, paid and bore the freight charges as such; that on those shipments which moved prior to December 23, 1913, they have been damaged to the extent of the difference between the charges paid and those that would have accrued on the basis herein found reasonable; and that the Martin Brokerage Company, Pearson-Ryan Company, and United Brokers Company are entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record and complainants should prepare statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statements should be submitted to defendants for verification. Upon receipt of statements so prepared and verified we will consider the entry of an order awarding reparation.

No. 9764.¹
JONAS AND SIM WEIL
v.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY
COMPANY ET AL.

Submitted December 30, 1917. Decided August 10, 1918.

Rates on stock cattle, in carloads, from Sioux City, Iowa, to certain points in Kentucky not shown to have been unreasonable or otherwise in violation of the act. Complaints dismissed.

Harry B. Miller for complainants.

C. A. Lahey for Chicago, Milwaukee & St. Paul Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

The complaints herein, filed June 16, 1917, attack the charges collected by defendants on 73 carloads of stock cattle shipped in July and August, 1915, from Sioux City, Iowa, to Lexington and Paris, Ky., as unreasonable and in violation of the fourth section of the act. Reparation is asked. Rates are stated in cents per 100 pounds except as otherwise noted.

The shipments moved over the Chicago, Milwaukee & St. Paul Railway, hereinafter called the Milwaukee, to Des Moines, Iowa; Wabash Railroad to St. Louis, Mo., or East St. Louis, Ill.; Louisville & Nashville Railroad to Henderson, Ky.; Louisville, Henderson & St. Louis Railway to Louisville, Ky., and Louisville & Nashville beyond. The Louisville, Henderson & St. Louis is not a party defendant. It developed at the hearing that two of the shipments moved to Hutchinson, Ky. No joint rates applied, and charges to Louisville were collected at a combination commodity rate of 40.3 cents, composed of rates of 24.5 cents to St. Louis or East St. Louis, and 15.8 cents beyond. Commodity rates of \$16 and \$17 per car of standard size, with increased charges for larger cars, applied from Louisville to Lexington and Paris, respectively. The record fails to show the dimensions of the cars used, and we are unable to determine whether the correct charges were assessed for the movement beyond Louisville. The record does not show what rate was charged

¹ This report also embraces No. 9764 (Sub-No. 1) *Simon Well & Son v. Chicago, Milwaukee & St. Paul Railway Company et al.*

beyond Louisville on the shipments to Hutchinson; the rate legally applicable was \$21 per car. Hutchinson is directly intermediate to Paris over the route of movement. The maintenance of a rate to Paris lower than to Hutchinson was protected by an appropriate fourth section application not heard with this case.

Complainants are under the misapprehension that at the time of movement a combination rate of 34.18 cents applied on stock cattle from Sioux City to Louisville by way of Savanna, Ill., composed of a commodity rate of 18.38 cents to Savanna—75 per cent of the 24.5-cent rate on fat cattle—and a proportional commodity rate of 15.8 cents from Savanna to Louisville, and contend that the Milwaukee misrouted the shipments in not forwarding them by way of Savanna; also that the rate by way of Savanna applied over the route of movement under rule 5(b) of our Tariff Circular 18-A. The tariff naming the 18.38-cent rate from Sioux City to Savanna provided that such rate would not apply in connection with proportional rates beyond. The component legally applicable from Sioux City to Savanna on shipments to the destinations in question was 24.5 cents. The combination rate from and to these points by way of Savanna was therefore the same as over the route of movement.

We find that the rates assailed are not shown to have been unreasonable or otherwise in violation of the act.

An order dismissing the complaints will be entered.

51 I. C. C.

No. 9820.¹

INLAND STEEL COMPANY

v.

INDIANA HARBOR BELT RAILROAD COMPANY ET AL.

Submitted February 25, 1918. Decided August 10, 1918.

Rate on plain sheet steel, in carloads, from Indiana Harbor, Ind., to Phoenix, Ariz., found to have been unreasonable. Reparation awarded.

C. L. Lingo for complainant.

James B. Coffey for Atchison, Topeka & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

The complainant, a corporation manufacturing steel at Indiana Harbor, Ind., alleges by complaints filed August 11, 1917, that the rate of \$1.14 per 100 pounds charged by defendants on two carloads of plain sheet steel, shipped February 26 and April 26, 1915, from Indiana Harbor to Phoenix, Ariz., was unreasonable to the extent that it exceeded \$1.07. Reparation is asked. The claims were presented to the Commission informally February 10, 1917. Rates are stated in amounts per 100 pounds.

The shipments consisted of plain sheet steel, 16 gauge or lighter. The one in No. 9820, weighing 41,312 pounds, moved over the Indiana Harbor Belt and the Chicago Great Western railroads and the Atchison, Topeka & Santa Fe Railway, and charges were collected in the sum of \$470.95, at a rate of \$1.14 applicable on "iron and steel, * * * sheet No. 12 and lighter * * * not * * * punched * * *." The shipment in Sub-No. 1 weighed 57,420 pounds and moved over the Indiana Harbor Belt and the Atchison, Topeka & Santa Fe. Charges were collected in the sum of \$654.59 at the \$1.14 rate. Contemporaneously defendants maintained from and to these points a rate of \$1.07 on "iron and steel * * * sheet, flat rolled or corrugated, punched, but not riveted * * *." On November 18, 1915, defendants established a rate of 90 cents, minimum 50,000 pounds, from and to these points on sheet steel No. 12 and lighter, not bent or punched, and on March 18, 1918, a rate of \$1.15 on sheet steel, punched.

¹ This report also embraces No. 9820 (Sub-No. 1), Same v. Indiana Harbor Belt Railroad Company et al.

Complainant contends that the \$1.07 rate was applicable, apparently, on the theory that the words "punched, but not riveted" limited the extent of manufacture permitted under the item, and that the provision would embrace sheet steel of a less degree of manufacture or sheet steel in its plain state. We do not agree with this contention, and find that the rate charged was legally applicable.

The record contains no justification for the charging of a higher rate on plain steel than on the same commodity punched. Defendant's witness testified that the rates on plain steel and steel, punched, were established following the so-called *Intermountain Cases*, 32 I. C. C., 11; 34 ib., 13; 38 ib., 237; that at the time of the hearing these rates were before us, and that therefore no reparation should be awarded.

We find that the rate charged was unreasonable to the extent that it exceeded the rate contemporaneously in effect on punched sheet steel from and to the same points; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation from the Indiana Harbor Belt Railroad Company, Chicago Great Western Railroad Company, and the Atchison, Topeka & Santa Fe Railway Company in the sum of \$28.91, with interest, and from the Indiana Harbor Belt Railroad Company and the Atchison, Topeka & Santa Fe Railway Company in the sum of \$40.20, with interest.

An order for reparation will be entered.

51 I. C. C.

No. 9858.

GOOD-HOPKINS LUMBER COMPANY

v.

GREAT NORTHERN RAILWAY COMPANY ET AL.

Submitted January 17, 1918. Decided August 10, 1918.

Charges on two carloads of pine lumber from Wahkiakus, Wash., to Vandalla and Dodson, Mont., not shown to have been unreasonable or unjustly discriminatory. Complaint dismissed.

R. J. Knott for complainant.

Thomas Balmer and *C. J. Bolander* for Great Northern Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

The complainant seeks reparation on two carloads of pine lumber, shipped August 1 and October 29, 1916, from Wahkiakus, Wash., to Vandalia and Dodson, Mont., on which it alleges unreasonable and unjustly discriminatory charges were collected.

The shipments weighed 48,800 and 46,600 pounds, respectively, and moved over defendants' lines in 40-foot cars of 2,689 cubic feet capacity each. Charges were collected in the sum of \$370.60 at a joint rate of 34 cents per 100 pounds, minimum 54,500 pounds.

Defendants' tariffs provided for the application of rates based on the cubical capacity of the cars furnished, and, by exception, authorized the assessment of charges on basis of the actual weight of shipments, subject to a minimum of 30,000 pounds, when cars were loaded to their "full visible capacity." To secure the benefit of this exception, shippers were required under the tariffs to certify on the bills of lading or shipping receipts, over their written signatures, that the cars were loaded to full visible capacity. The tariffs specifically provided that when such certification was not so given charges would be assessed on basis of the cubical capacity. No such notation was made on the bills of lading covering these shipments.

Complainant contends that the charges were unreasonable and unjustly discriminatory to the extent that they exceeded those that would have accrued at the legal rate and actual weight, apparently upon the theory that the certification required by the tariffs is a formality wholly disassociated with the duty of the carriers to police such shipments. No complaint is made of the measure of the rate

charged or of the minimum weight provision, and no substantial evidence was introduced to support the allegation of unjust discrimination. It was stated on behalf of complainant that the minima on lumber from Washington to points in states east thereof vary according to destination, and that lack of uniformity in this respect was a contributing cause to its failure to make the certification required by the tariffs. The question of lumber carload minima is now pending before the Commission in another proceeding.

The law imposes upon shippers the duty of ascertaining the rates and conditions under which they ship, and noncompliance by a shipper with tariff rules affords no basis for a finding that the rate legally applicable is unreasonable or unjustly discriminatory.

We find that the charges were assessed in accordance with the provisions of the published tariffs and are not shown to have been unreasonable or unjustly discriminatory. An order dismissing the complaint will be entered.

51 I. C. C.

No. 9872.

CENTRAL FOUNDRY COMPANY

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY
ET AL.

Submitted December 11, 1917. Decided August 10, 1918.

Rate on cast-iron pipe, in carloads, from Holt, Ala., to Seattle, Wash., found to have been unduly prejudicial but not shown to have been unreasonable. Reparation denied for want of proof of damage and complaint dismissed.

W. J. Moloney for complainant.

F. C. Turner for Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant manufactures cast-iron pipe at Holt, Ala. By complaint filed September 14, 1917, it alleges that the rate of 65 cents per 100 pounds charged by defendants on a carload of cast-iron pipe shipped June 14, 1915, from Holt to Seattle, Wash., was unreasonable and unjustly discriminatory to the extent that it exceeded 55 cents. It asks for an award of reparation. The claim was presented to the Commission informally within the statutory period. Rates are stated in cents per 100 pounds.

Holt is in west central Alabama on the Mobile & Ohio and Louisville & Nashville railroads. The shipment weighed 78,000 pounds, and moved over the Louisville & Nashville to East St. Louis, Ill.; Chicago, Burlington & Quincy Railroad to Minnesota Transfer, Minn.; and Chicago, Milwaukee & St. Paul Railway beyond, 2,898 miles. Charges were collected in the sum of \$507 at a commodity rate of 65 cents, legally applicable.

Cast-iron pipe is manufactured at Holt, Bessemer, Anniston, and Birmingham, Ala., and manufacturers located at these points compete in the Pacific coast markets. Prior to May 22, 1915, defendants maintained a rate of 65 cents, minimum 60,000 pounds, on this commodity from these producing points to Pacific coast terminals, including Seattle. On that date this rate was reduced to 55 cents, but the latter rate was not made applicable from Holt by way of the Louisville & Nashville. On November 8, 1915, the 55-cent rate was established from Holt in connection with the Louisville & Nashville.

Complainant expressly disclaimed any attack on the reasonableness of the rate charged, the sole contention being that the defendants' failure to establish the same rate from Holt over the Louisville & Nashville as an initial carrier as contemporaneously applied from other producing points in Alabama unjustly discriminated against complainant. The only evidence offered by complainant with respect to the alleged discrimination consisted of the statement that its "keenest competition is in the Birmingham and Anniston districts which puts the factory at Holt at a disadvantage in marketing at destination."

The Chicago, Burlington & Quincy and the Chicago, Milwaukee & St. Paul denied complainant's allegations, but the Louisville & Nashville, which was the only defendant represented at the hearing, expressed willingness to make reparation on the basis sought. The rate charged yielded 17.5 cents per car-mile and 4.5 mills per ton-mile.

In *Commodity Rates to Pacific Coast Terminals*, 32 I. C. C., 611, decided January 29, 1915, we said that the 65-cent rate on cast-iron pipe, in carloads, from Atlantic seaboard territory to Pacific coast terminals was the lowest of many commodity rates therein concerned. In *U. S. Cast Iron Pipe & Foundry Co. v. S. Ry. Co.*, 37 I. C. C., 75; 44 I. C. C., 757; we found in substance, that the maintenance by defendants of a rate of 75 cents on cast-iron pipe and fittings, in carloads, from Bessemer and Anniston to El Segundo, Cal., while at the same time maintaining rates of 65 cents on the same articles to the same destination from competing districts east of the Mississippi River was unduly prejudicial to complainant. In the original report reparation was denied as it was not shown that the undue prejudice resulted in damage to complainant, but upon rehearing and proof of damage reparation was awarded.

We find that the rate assailed is not shown to have been unreasonable, but that it was unduly prejudicial to the extent that it exceeded the rate contemporaneously in effect from Bessemer, Anniston, and Birmingham to the same destination. Any undue prejudice which may have existed has now been removed, and there is no proof of damage to complainant by reason of the undue prejudice herein found to have existed.

An order dismissing the complaint will be entered.

HARLAN, *Commissioner*, dissents.

51 I. C. C.

No. 9881.

C. & J. MICHEL BREWING COMPANY ET AL.

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
ET AL.

Submitted December 15, 1917. Decided October 2, 1918.

Rate on cereal beverages, carbonated, nonalcoholic, in carloads from La Crosse, Wis., to Sioux Falls, S. Dak., not shown to have been or to be unreasonable but found to be unduly prejudicial as compared with the rates contemporaneously in effect on the same commodities from Milwaukee, Wis., and St. Louis, Mo., to the same destination. Reparation denied and complaint dismissed.

W. W. West for complainants.

C. A. Lahey for Chicago, Milwaukee & St. Paul Railway Company.

A. F. Cleveland for Chicago & North Western Railway Company and Chicago, St. Paul, Minneapolis & Omaha Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

This complaint filed September 20, 1917, as amended, attacks defendants' rates on carbonated, nonalcoholic, cereal beverages, hereinafter called cereal beverages, in carloads, from La Crosse, Wis., to Sioux Falls, S. Dak., alleging that they were and are unreasonable, unjustly discriminatory, and unduly prejudicial. Complainants pray for an award of reparation on shipments that moved within the statutory period and the establishment of reasonable and nondiscriminatory rates. Rates are stated in cents per 100 pounds as of the time of the hearing.

The rate applicable on cereal beverages, in carloads, from La Crosse to Sioux Falls is 20 cents, which is the western classification fifth-class rate. It is not strongly urged that this rate is intrinsically unreasonable, but the primary issue is whether it is unduly prejudicial in comparison with the commodity rate of 23 cents applicable on like traffic to Sioux Falls from Milwaukee, Wis., and St. Louis, Mo., at which latter points complainants' principal competitors are located.

We found in *La Crosse Shippers Asso. v. C. M. & St. P. Ry Co.*, 44 I. C. C., 497, that the rate on beer, in carloads, from La Crosse to Sioux Falls was not shown to be unreasonable, but that it was, and for the future would be, unduly prejudicial to the extent that it exceeded or might exceed 6.5 cents per 100 pounds less than the rates contemporaneously in effect on the same commodity from Milwaukee and St. Louis to the same destination. At the time of that decision the rates on beer and on cereal beverages to Sioux Falls were 20 cents from La Crosse and 23 cents from Milwaukee and St. Louis. Since July 1, 1917, a prohibition law has prevented the sale of beer in Sioux Falls and effective August 1, 1917, instead of reducing the rate on beer from La Crosse to Sioux Falls to 16.5 cents, our order, which was in the alternative, was complied with by increasing the rates on beer from Milwaukee and St. Louis to Sioux Falls to the fifth-class basis.

The 23-cent rate, which has been continued in effect on cereal beverages from Milwaukee and St. Louis to Sioux Falls, is 5 cents less than fifth class, while complainants are required to pay the full fifth-class rate on their products. Complainants rely largely upon our decision in the case cited, stating that the cost of manufacturing cereal beverages and beer is about the same and that the transportation characteristics are not essentially different. Rates on the fifth-class basis are generally applicable on these commodities, in carloads, in western trunk line territory, and where commodity rates are in effect on beer, cereal beverages are accorded identical rates. Cereal beverages are rated the same as beer in the official classification and generally lower than beer in the southern classification.

For the defendants numerous rate comparisons were offered tending to show that the rate assailed is not unreasonable, and in justification of the rate adjustment complained of contentions similar to those urged and considered in the cases cited were advanced. It was further urged for defendants that the circumstances surrounding the marketing and transportation of nonalcoholic beverages are dissimilar from those surrounding the marketing and transportation of beer; that beer is manufactured at comparatively few specified points, such as Chicago, Ill., Milwaukee, St. Paul, Minn., La Crosse, and St. Louis, while nonalcoholic, or soft drinks, with which cereal beverages are classified, are also manufactured and shipped from a great many other points.

Following *La Crosse Shippers' Asso. v. C., M. & St. P. Ry. Co.*, *supra*, and upon the facts of record, we find that the rate assailed is not shown to have been unreasonable, but that it is unduly prejudicial to the extent that it exceeds 6.5 cents per 100 pounds less than the rates contemporaneously in effect on cereal beverages, carbon-

ated, nonalcoholic, in carloads, from Milwaukee and St. Louis to Sioux Falls. No damage was shown and reparation is denied. The carriers concerned are now under federal control and an opportunity was afforded to amend the complaint by making the Director General of Railroads a party defendant. As no amendment was filed no finding or order for the future can be made effective in the present state of the pleadings.

An order will therefore be entered dismissing the complaint.

No. 9869.¹

CAPE GIRARDEAU COMMERCIAL CLUB ET AL.
v.
ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted February 7, 1918. Decided August 13, 1918.

1. The fact that a carrier subject to the act to regulate commerce and a city served by it have contracted, in consideration of the grant of certain privileges by the city to the carrier, for the maintenance of a definite rate on coal moving in interstate commerce, lower than a rate afterwards established by the carrier in the manner provided by the act, does not authorize the Commission in testing the reasonableness of the later and higher rate to apply considerations other than those which would generally be applicable.
2. Increased rate on bituminous coal, in carloads, from mines in the southern Illinois coal fields located on the Illinois Central and the Chicago & Eastern Illinois railroads to Cape Girardeau, Mo., found justified. Complaints dismissed.

George B. Webster for complainants.

A. P. Humburg for Illinois Central Railroad Company.

C. B. Cardy for Chicago & Eastern Illinois Railroad Company and its receiver.

H. E. Morris for St. Louis-San Francisco Railway Company.

¹ This report also embraces No. 9869 (Sub-No. 1), Cape Girardeau Commercial Club v. Chicago & Eastern Illinois Railroad Company et al.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND AITCHISON.

BY DIVISION 2:

The complainants allege that the rate of 90 cents per net ton charged by the defendants for the transportation of bituminous coal, in carloads, from mines in the southern Illinois coal fields, located on the Illinois Central and the Chicago & Eastern Illinois railroads, to Cape Girardeau, Mo., was and is unreasonable to the extent that it exceeded and exceeds 60 cents. They ask for reparation on shipments moving within the statutory period and for the establishment of a rate of 60 cents. Rates are stated in amounts per net ton.

The traffic moves over the Chicago & Eastern Illinois from the so-called Marion group, and over the Illinois Central from its group 3, both in southern Illinois, to Thebes, Ill., thence over the Chicago & Eastern Illinois across the Mississippi River through Illmo and Rockview, Mo., to the Chaffee yard at Chaffee, Mo., thence back through Rockview over the St. Louis-San Francisco Railway, hereinafter termed the Frisco, to Cape Girardeau.

These cases are sequels to *Moore v. St. L. & S. F. R. R. Co.*, 43 I. C. C., 749, in which the relationship of rates on coal, in carloads, from these mines to Hazel Spur, Rockview, Chaffee, and Cape Girardeau was considered. We found that the rates to Illmo of 90 cents; Rockview, 95 cents; Chaffee, 75 cents; Cape Girardeau, 75 cents; and Hazel Spur, 90 cents, were not unreasonable, unjustly discriminatory, or unduly prejudicial; but the fourth section application of the Chicago & Eastern Illinois, wherein authority was sought on behalf of that line and its connections to continue rates to Chaffee and Cape Girardeau lower than the rates contemporaneously in effect to intermediate points, was denied. By tariffs effective July 1, 1917, the defendants complied with our fourth section order by establishing to each point a rate of 90 cents, except that to Hazel Spur the rate was made \$1.05.

The complainants contend that the decision in that case was unsound and that the orders entered therein did not justify the increase made in the rate to Cape Girardeau. It is urged that we did not give due weight to ordinance No. 935 of the city of Cape Girardeau, which was there introduced in evidence and again introduced in this case. By that ordinance, approved January 5, 1911, and accepted by the St. Louis & San Francisco Railroad Company, to which the defendant Frisco is successor, it was agreed that in consideration of certain rights and privileges granted by the city the railroad would maintain for a period of 30 years a rate, among others, of 60 cents per net ton on coal from the mines on the Chicago

& Eastern Illinois in southern Illinois, Benton and south, to Cape Girardeau. It is argued that these rights and privileges, alleged to be worth \$50,000 annually, should be taken into consideration in measuring the reasonableness of the rate.

The complainants recognize that we have no power to enforce the agreement contained in the ordinance. We may consider the question of the reasonableness of the rate assailed only in the light of those considerations which would apply in any other case. None of the accepted tests of reasonableness are submitted by complainants. The division of the former rate accepted by the Frisco is not determinative.

The defendants were at liberty to comply with the fourth section order by increasing the rates to Chaffee and Cape Girardeau if they did not thereby offend the act. The defendants submitted a number of rate comparisons, covering the movement of coal in the same general territory and elsewhere, in several cases at higher rates for shorter distances, with which the rate assailed compares favorably.

We find that the defendants have justified the increased rate assailed, and an order dismissing the complaints will be entered.

51 I. C. C.

No. 8729.

RUSSIAN POULTRY & EGG COMPANY

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY ET AL.

Submitted October 7, 1916. Decided October 2, 1918.

Rates on eggs and live poultry, in carloads, from Muskogee, Okla., to Chicago, Ill., St. Louis, Mo., and certain other points found unduly prejudicial as compared with the rates contemporaneously maintained on like traffic from Fayetteville, Ark., and other points to the same destinations. Complainants not shown to have been damaged and reparation denied. Complaint dismissed.

J. E. Noon for complainants.

R. D. Williams for Missouri, Kansas & Texas Railway Company and its receiver.

Thomas Bond and *C. S. Burg* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

The complainants allege in their complaint filed March 15, 1916, as amended, that the rates charged by defendants on eggs and live poultry, in carloads, from Muskogee, Okla., to Chicago, Ill., St. Louis, Mo., and certain points in the state of New York, were unduly prejudicial in favor of dealers at Fort Smith and Fayetteville, Ark., Westville, Okla., Joplin, Mo., and Parsons, Kans. They ask for reparation on various shipments moving within the statutory period and the establishment of nonprejudicial rates. Rates are stated in cents per 100 pounds, and are those in effect prior to June 25, 1918.

Complainants purchase eggs and live poultry in less-than-carload lots within a radius of 75 miles of Muskogee, at which point they concentrate these commodities and reship them in carloads to the destinations mentioned. It was testified on their behalf that they compete with dealers at the other points named and especially with dealers at Fayetteville, who are advantaged by reason of a lower basis of outbound rates. Complainants offered in evidence statements of inbound rates to the concentration points, with a view to comparing the total inbound and outbound rates paid, but as only the outbound rates are attacked the inbound rates are not helpful.

The western classification, which governs, rates eggs and live poultry, in carloads, third class and second class, respectively. For

a number of years prior to early in 1915, live poultry, by exception to the western classification, moved in western trunk line, trans-Missouri and southwestern territories, at fourth-class rates. At that time, following *Rates on Poultry in Western Trunk Line Territory*, 32 I. C. C., 380, the rating was increased to third class. The case cited was reaffirmed in *Live Poultry & Dairy Shippers' Traffic Asso. v. Ry. Co.*, 49 I. C. C., 228. The rates applicable on live poultry from Muskogee, Parsons, and Joplin during the period of movement were the third-class rates while the rates applicable on eggs from all the points of origin and on live poultry from the points of origin other than those last named were commodity rates lower than third class. The following table compares the rates assailed with the third-class rates to Chicago and St. Louis. As the rates to the New York points are based on Chicago or St. Louis, they will not be discussed:

From—	To St. Louis.				To Chicago.			
	Dis- tance.	Rates on—		Third- class rates.	Dis- tance.	Rates on—		Third- class rates.
		Eggs.	Live poul- try.			Eggs.	Live poul- try.	
	Miles.	Cents.	Cents.	Cents.	Miles.	Cents.	Cents.	Cents.
Muskogee.....	457	¹ 65	80	80	708	75	90	90
Fayetteville.....	353	² 45	45	68	686	57	61	78
Fort Smith.....	416	45	45	75	699	61	61	87
Westville.....	385	50	50	77	668	60	55	87
Parsons.....	380	¹ 40	55	55	587	50	65	65
Joplin.....	332	¹ 35	50	50	600	45	60	60

¹ When destined to points east of the western terminal, 1 cent less.

² To East St. Louis, Ill., when destined to points east of the western terminal, 44 cents.

By way of the St. Louis-San Francisco Railway Westville and Fayetteville are directly intermediate Muskogee to St. Louis.

The complainants contend that the Muskogee rates should not exceed those from Fayetteville by more than 10 cents on poultry and 5 cents on eggs. It will be noted that the rates from Muskogee exceeded the rates from the other concentration points by considerably greater percentages than the distances from Muskogee exceed the distances from those points. With respect to the rates from Joplin and Parsons, the defendants urge that they were subnormal, being depressed by the influence of the highly competitive rate adjustment between the Mississippi and Missouri rivers and also by Missouri state-made rates. It is insisted that these influences do not affect the rates from the Oklahoma points. The class and commodity rates generally are adjusted on the same basis.

The defendants offered no explanation for the relationship between the rates from Muskogee and the concentration points mentioned, other than Joplin and Parsons, and stated that it was their intention

to place the rates on both poultry and eggs from those points on the full third-class basis, which would have resulted in rates from Muskogee to St. Louis 12 cents higher than from Fayetteville, 5 cents higher than from Fort Smith, and 3 cents higher than from Westville. In *Rates on Dairy Products*, 43 I. C. C., 700, and *Southwestern Dairy Products*, 44 I. C. C., 379, decided since the hearing in this case, we found that the carriers had not justified proposed commodity rates on eggs from points in Arkansas, Oklahoma, and other states to Mississippi River crossings, Chicago, and related points to the third-class basis.

Upon this record we find that the rates assailed were unduly prejudicial to complainants to the undue preference and advantage of dealers located at Westville, Fayetteville, and Fort Smith, to the extent that the rates from Muskogee to the destinations in question exceeded the rates from Westville, Fayetteville, and Fort Smith by more than the differences between the third-class rates from Muskogee and from the other points mentioned to the same destinations. The record does not establish the amount of the damage, if any, which resulted to complainants from the undue prejudice found to exist, and no reparation will be awarded. The carriers concerned are now under federal control and an opportunity was afforded to amend the complaint by making the Director General of Railroads a party defendant. As no amendment was filed no finding or order for the future can be made effective in the present state of the pleadings.

An order dismissing the complaint will be entered.

51 I. C. C.

No. 9864.¹

BARTELDES SEED COMPANY ET AL.

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted February 10, 1918. Decided August 10, 1918.

Rates on Sudan grass seed, in carloads, from certain points on the Panhandle & Santa Fe Railway in Texas to Oklahoma City, Okla., Lawrence and Atchison, Kans., and Kansas City, Mo., found to have been legally applicable and not shown to have been unreasonable except from Lubbock, Tex., to Kansas City. Reparation awarded.

E. P. Dixon and *P. R. Wigton* for complainants.

F. E. Andrews and *T. J. Norton* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

By DIVISION 3:

The complainants in No. 9864 are Barteldes Seed Company, Mangelsdorf Brothers Company, J. G. Peppard Seed Company, and Rudy-Patrick Seed Company, corporations engaged in the wholesale seed business at Oklahoma City, Okla., Lawrence and Atchison, Kans., and Kansas City, Mo., respectively. The complaint in No. 9867 was filed by the Sioux City Seed & Nursery Company, which has since been succeeded by the Sioux City Seed Company, a corporation engaged in the seed business at Sioux City, Iowa. By complaints, seasonably filed, it is alleged that the charges collected on various carloads of Sudan grass seed shipped from certain points on the Panhandle & Santa Fe Railway in Texas to various points in Oklahoma, Kansas, and Missouri between December 16, 1915, and May 1, 1916, both inclusive, were unreasonable, and in No. 9867 also illegal, to the extent that they exceeded the charges that would have accrued at the commodity rates applicable from and to the same points on sorghum seed. A violation of the rule of the fourth section prohibiting the charging of a through rate in excess of the aggregate of the intermediate rates is also alleged and an award of reparation prayed. Rates are stated in cents per 100 pounds.

¹ This report also embraces No. 9867, Sioux City Seed & Nursery Company v. Atchison, Topeka & Santa Fe Railway Company et al.

The shipments, consisting of Sudan grass seed in sacks, moved over the Panhandle & Santa Fe and the Atchison, Topeka & Santa Fe Railway, 1 from Tulia, Tex., to Oklahoma City; 1 each from Plainview and Lubbock, Tex., to Lawrence; 1 from Plainview and 2 from Lubbock to Atchison; and 13 from Lubbock to Kansas City. The latter, except the one in No. 9867, were delivered by either the Missouri Pacific Railroad or the St. Louis-San Francisco Railway, the charges for these switching services being absorbed by the line-haul carriers. Charges were collected at the class A rates, governed by the western classification, applicable to grass seed, n. o. i. b. n. carloads, ranging from 52 to 87 cents.

At the time of movement there were in effect commodity rates on sorghum seed of 40 cents from Plainview to Lawrence and Atchison, 42.5 cents from Tulia to Oklahoma City, and 43 cents from Lubbock to Lawrence, Atchison, and Kansas City. On June 8 and August 15, 1916, these rates were made applicable to Sudan grass seed. Complainants contend that the shipments were a variety of sorghum seed and were entitled to the commodity rates applicable to that article; and further, that if the rates on sorghum seed were inapplicable the rates charged were unreasonable to the extent that they exceeded those subsequently established.

Complainants show by bulletins issued by the United States Department of Agriculture and the Oklahoma Agricultural and Mechanical College that Sudan grass is known botanically as *Andropogon sorghum*. This grass has been recently introduced into this country, and, while intended primarily as a forage crop, it has been raised principally for seed production on account of the prevailing high price of the seed. Copies of invoices of record show prices obtained f. o. b. shipping point ranging from 2½ to 7 cents per pound. It was testified by complainants' witnesses that the price of sorghum seed during the period in question was from 1 to 2 cents per pound, and that the relatively higher price obtained for Sudan grass seed was due to its newness in the market. No evidence was introduced as to the comparative volume of movement of sorghum and Sudan grass seed.

For the defendants it was stated that the subsequent application to this commodity of the rates on sorghum seed was made, not because the volume of movement warranted it, but in order to encourage its production.

While this grass may be closely related to commercial sorghum, it is readily distinguishable from it. If complainants' contentions were sound, Kaffir corn and Johnson grass seed, as well as numerous other grass seeds included within the sorghum family, would be entitled to the rates applicable to sorghum seed. We find that the rates

assailed were legally applicable and that it is not shown that the charging of a higher rate on Sudan grass seed than on sorghum seed was unreasonable.

During the period of movement there was applicable from Lubbock to Kansas City a combination rate composed of the class A rate of 80 cents, minimum 30,000 pounds, to Argentine, Kans., an intermediate point, and a switching charge of \$5 per car in addition to a car-rental charge of \$3 per car from Argentine to Kansas City. The switching charge of the Missouri Pacific and the St. Louis-San Francisco for switching at Kansas City was in each instance \$3 per car. All the shipments to Kansas City in No. 9864, except four, were sold delivered at Kansas City, the consignors, not parties hereto, in each instance having borne the freight charges. The excepted shipments were received by the Rudy-Patrick Seed Company, which paid and bore the freight charges amounting to \$1,281.08, based upon the class A rate of 87 cents and an aggregate weight of 147,251 pounds. The charges paid on the latter shipments exceeded those that would have accrued at the aggregate of the intermediate rates to and from Argentine by \$59.08. In No. 9867 the charges paid, \$261, exceeded those that would have accrued at the combination on Argentine by \$13. The departures from the provisions of the fourth section were protected by an appropriate application and have since been removed by the establishment of the commodity rate above mentioned.

We further find that the charges collected on the shipments to Kansas City were unreasonable to the extent that they exceeded those that would have accrued at the combination of rates based on Argentine, Kans.; that in No. 9864 complainant Rudy-Patrick Seed Company made four of the shipments from Lubbock to Kansas City as described and paid and bore the charges thereon; that it has been damaged and is entitled to reparation in the sum of \$59.08, with interest; that in No. 9867 the Sioux City Seed & Nursery Company made one shipment from Lubbock to Kansas City and paid and bore the charges thereon; that it has been damaged and is entitled to reparation in the sum of \$13, with interest.

An order awarding reparation will be entered, but no order for the future is necessary.

No. 9902.

RUDDOCK ORLEANS CYPRESS COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted January 24, 1918. Decided October 2, 1918.

Rate on lumber, in carloads, from New Orleans, La., to Windom, Kans., not shown to have been unreasonable or unjustly discriminatory. Complaint dismissed.

Charles R. Currie for complainant.

F. R. Dalzell for Atchison, Topeka & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

The complainant herein alleges by complaint filed October 1, 1917, that the rate charged by defendants on a carload of cypress lumber and laths shipped March 2, 1917, from New Orleans, La., to Windom, Kans., was unreasonable and unjustly discriminatory in that it exceeded the rate that would have applied had the shipment moved by other lines, and prays for reparation. Rates are stated in cents per 100 pounds.

The shipment was delivered by complainant to the St. Louis, Iron Mountain & Southern Railway, then a subsidiary of the Missouri Pacific Railway, and moved over the lines of those carriers to Kansas City, Mo.; and thence over the Atchison, Topeka & Santa Fe Railway to Windom. Charges were collected at a combination rate of 38 cents, legally applicable, composed of rates of 24 cents from New Orleans to Kansas City and 14 cents beyond. At the time of movement a joint rate of 28.5 cents applied from and to these points over the lines of the Texas & Pacific Railway and its connections. The St. Louis, Iron Mountain & Southern reached New Orleans over the Texas & Pacific.

Complainant's plant at New Orleans is on the east side of the Mississippi River and is served by the Illinois Central Railroad. The track receipt of that line shows that the shipper gave instruction that this car should be switched to the St. Louis, Iron Mountain & Southern. This was a specific delivery equivalent to routing in-

structions. By instructing that the car be switched to the Texas & Pacific or to any one of three other carriers having terminals on the west bank of the Mississippi River complainant could have obtained the lower rate and the damage alleged could have been avoided.

We find that the rate assailed is not shown to have been unreasonable or unjustly discriminatory, and an order dismissing the complaint will be entered.

No. 9494.

SWIFT & COMPANY

v.

GREAT NORTHERN RAILWAY COMPANY ET AL.

Submitted May 11, 1917. Decided September 30, 1918.

Rate on sulphate of potash, in carloads, from Seattle, Wash., to East St. Louis, Ill., found to have been unreasonable. Reparation awarded.

R. D. Rynder for complainant.

John F. Finerty for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the packing-house business at Chicago, Ill. By complaint filed January 29, 1917, it alleges that the rate of \$1.50 per 100 pounds charged by defendants on two carloads of potash, shipped March 5, 1915, from Seattle, Wash., to East St. Louis, Ill., was unreasonable. It asks reparation. Rates are stated in amounts per 100 pounds.

Sulphate of potash is said to be used principally in the manufacture of commercial fertilizer. Prior to the European war it was obtained almost exclusively from Germany and was imported through the Atlantic and Gulf ports. The shipments in question were imported from Germany by way of Japan. They weighed 83,950 pounds and 80,100 pounds, respectively, and moved from Seattle over the Great Northern Railway in connection with the Chicago, Burlington & Quincy Railroad. Complainant testified that they were transported through Billings, Mont., but one shipment appears to have been forwarded by way of Minnesota Transfer, Minn.

Charges aggregating \$2,460.75 were collected at the domestic commodity rate of \$1.50, minimum 24,000 pounds, legally applicable under the descriptive item, drugs, medicines, and chemicals. On July 21, 1915, defendants established a specific domestic commodity rate of 60 cents, minimum 50,000 pounds, on sulphate of potash and muriate of potash, also a potassium salt. On April 9, 1917, the rate on sulphate of potash was increased to 75 cents, minimum 80,000 pounds, and on muriate of potash to \$1, the present rates.

Complainant contends that the rate charged was unreasonable to the extent that it exceeded the subsequently established commodity rate of 60 cents and a domestic commodity rate of 60 cents, minimum 50,000 pounds, in effect when the shipments moved on potash from San Francisco and other California points to East St. Louis. Effective April 9, 1917, the latter rate was increased to 75 cents. The 60-cent rate from the California points applied over defendants' lines through Seattle in connection with the Pacific Steamship lines. As it was lower than the rate contemporaneously applicable from Seattle, the adjustment was in contravention of the long-and-short-haul rule of the fourth section. It was not protected by an appropriate application and was therefore unlawful. Defendants state that there has been no movement over that route, and it appears that the present rates conform to the requirements of the fourth section.

The commodity rates from the California points were established to provide for the movement of potash manufactured at those points from kelp. Defendants testified that it had been represented that there would be a production of the domestic article in the northwest; and that, assuming complainant's shipments to be the kelp product, they established the commodity rate from Seattle to provide for its movement in competition with the California product. There is no present importation of this commodity from Germany, and under normal conditions the shipments would not have moved through Seattle. So far as the record discloses, there has been no movement from Seattle except the two shipments in question.

Complainant introduced exhibits showing a number of commodity rates contemporaneously in effect to East St. Louis, some of which applied from San Francisco and others from Seattle, attention being particularly directed to the rates on infusorial earth, junk, lumber, and silica, ranging from 50 cents to 90 cents. The average loading of these commodities, many of which are not analogous to potash, does not appear. Based on the applicable minima, the average per car, per car-mile, and per ton-mile earnings under the rates cited are materially lower than under the rate charged and somewhat lower than under the 60-cent rate subsequently established. The route over

which one of the shipments moved was 2,346 miles, and this is fairly representative of the route traversed by the other shipment. Using this distance and the average weight of the shipments, the average earnings at the rate charged were 12.8 mills per ton-mile and 52.4 cents per car-mile. At the present rate of 75 cents, the ton-mile and car-mile earnings would have been 6.39 mills and 26.2 cents, respectively. The fifth-class rate in effect from and to these points at the time of movement was \$1.68.

We find that the rate charged was unreasonable to the extent that it exceeded 75 cents per 100 pounds; that complainant made the shipments as described and paid and bore the charges thereon at the rate herein found unreasonable; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$1,230.38, with interest.

An order awarding reparation will be entered, but as the rate found reasonable has been in effect for more than a year no order for the future is necessary.

51 I. C. C.

No. 9474.

MORRIS HERRMANN & COMPANY

v.

NEW YORK, NEW HAVEN & HARTFORD RAILROAD
COMPANY ET AL.

Submitted August 1, 1917. Decided October 2, 1918.

1. Rate on spent iron mass (spent oxide) in carloads, from Lynn, Lowell, Malden, Boston, Charlestown, Natick, and Milford, Mass., to Elizabethport, N. J., not shown to have been unreasonable. Complainants not shown to have been damaged by the undue prejudice alleged.
2. Rate legally applicable on the same commodity from Cambridge, Mass., to Elizabethport, N. J., found to have been unreasonable. Reparation awarded.

J. C. Lincoln and Milne, Blake, McAneny & Durham for complainants.

A. E. Allen for Boston & Albany Railroad Company.

A. E. Prescott for Boston & Maine Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainants are Morris Herrmann and Nellie W. Renskorf, co-partners engaged in the manufacture of dry colors at Elizabethport and Newark, N. J., under the name of Morris Herrmann & Company. By complaint, filed December 16, 1916, they allege that the rate of \$3.16 per ton charged by defendants on 34 carloads of spent iron mass (spent oxide) shipped from Lynn, Lowell, Malden, Charlestown, Boston, Cambridge, Natick, and Milford, Mass., to Elizabethport, between December 10, 1915, and February 7, 1916, inclusive, were unreasonable, unduly prejudicial, and in violation of the long-and-short-haul rule of the fourth section to the extent that it exceeded \$2.42. Reparation is asked. Rates are stated in cents per 100 pounds except as otherwise noted.

Twenty-seven carloads originated on the Boston & Maine Railroad; 10 at Lynn, 9 at Lowell, and 4 each at Malden and Charlestown (Boston); and 7 on the Boston & Albany Railroad, 5 at Cambridge, and 1 each at Natick and Milford. They moved over defendants' lines, and charges were collected, except on 5 carloads from Lowell, at the legally applicable sixth-class rate of 15.8 cents, minimum 36,000 pounds, governed by the official classification. On

the 5 excepted shipments charges were collected at a rate of \$3.16 per long ton, for which no tariff authority appears. The 15.8-cent rate was also legally applicable on these shipments, so that they were apparently undercharged.

At the time the shipments moved the Boston & Maine maintained a commodity rate of \$2.42 per net ton on spent oxide, in carloads, from Malden, Lynn, Lowell, Charlestown, Boston, and various other points in Massachusetts not concerned in this case, to Philadelphia, applicable only in connection with the New York, New Haven & Hartford and the Pennsylvania railroads, over which route Elizabethport is not intermediate to Philadelphia. A like rate was published by the Boston & Albany from Cambridge and other points in Massachusetts not material for the purposes of this case, to Philadelphia, applicable over three routes, over one of which Elizabethport was and is intermediate to Philadelphia. On January 18 and February 28, 1916, this rate was also made applicable from Milford and Natick, respectively. The shipments from the latter points moved December 10 and December 29, 1915, respectively, on which dates the rates to Philadelphia through Elizabethport were the same as those applicable to Elizabethport so that there were no departures from the fourth section in connection with the shipments from those points. The rate charged on the shipments from Cambridge was in excess of the rate to Philadelphia, which applied through Elizabethport. The tariff naming these rates provided, conformably to rule 77 of Tariff Circular 18-A, that, upon reasonable request therefor, rates would be established to intermediate points not exceeding those to more distant points on one day's notice. This is a substantial compliance with the requirements of the fourth section. *Kosse, Shoe & Schleyer Co. v. C., C., C. & St. L. Ry. Co.*, 41 I. C. C., 602. It appears that no request was made for the establishment of the Philadelphia rate to Elizabethport prior to the time the shipments moved from Cambridge. In support of their contentions complainants rely solely upon the ground that a lower rate contemporaneously applied to Philadelphia, at which point one of their competitors is located, than to Elizabethport. On February 28 and May 8, 1916, the \$2.42 rate was established by the Boston & Albany and the Boston & Maine, respectively, from the points of origin on their lines to Elizabethport.

We find that, except on the shipments from Cambridge, the rates legally applicable are not shown to have been unreasonable. Any undue prejudice which may have existed has now been removed and the record does not contain the proof of damage necessary to support an award of reparation under a finding of undue prejudice. We further find that the rate legally applicable on the shipments from

Cambridge was unreasonable to the extent that it exceeded \$2.42 per net ton; that the complainants made the shipments from Cambridge as described and paid and bore the charges thereon; that they were damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that they are entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record and the complainants should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the date on which the charges were paid, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

51 I. C. C.

No. 9816.

F. W. LOYD

v.

ATLANTIC & CAROLINA RAILROAD COMPANY ET AL.

Submitted January 27, 1918. Decided October 2, 1918.

Rates on lumber in carloads from West, N. C., to Richmond, Va., and various points in trunk line territory found to have been unreasonable and unduly prejudicial. Reparation awarded.

F. W. Loyd and Claude W. Owen for complainant.

J. W. Perrin, R. Walton Moore, and D. Lynch Younger for Atlantic & Carolina Railroad Company and Atlantic Coast Line Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant, engaged in the lumber business at Newbern, N. C., alleges by complaint filed July 25, 1917, that the rates charged by defendants on 15 carloads of lumber, shipped between March 14, 1916, and January 18, 1917, inclusive, from West, N. C., to Richmond, Va., and certain points in Pennsylvania and New Jersey were unreasonable and unduly prejudicial to the extent that they exceeded the rates in effect when the complaint was filed. Reparation is prayed. Rates are stated in cents per 100 pounds.

The details concerning the shipments are shown in the table following.

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Date.	From West, N. C., to—	Route.	Weight.	Charges col- lected.	Rate.		Under- charges.	Over- charges.
					Charged.	Legally appli- cable.		
Mar. 14, 1916	Nicetown, Pa....	A. & C., A. C. L., N. Y. P. & N., P. B. & W., P. & R.	<i>Pounds.</i> 45,100	\$94.71	<i>Cents.</i> 21	<i>Cents.</i> 23.5	\$11.28	.....
Apr. 26, 1916	.....do.....	.....do.....	52,700	110.67	21	23.5	13.18	.....
Apr. 18, 1916	.....do.....	.....do.....	44,300	106.32	24	23.5	.....	\$2.21
May 5, 1916	North Philadel- phia, Pa.	A. & C., A. C. L., N. Y. P. & N., P. B. & W., P. R. R.	52,700	113.31	21.5	21.5	.....	.....
May 13, 1916	.....do.....	.....do.....	59,800	128.57	21.5	21.5	.....	.....
May 23, 1916	.....do.....	.....do.....	58,000	124.70	21.5	21.5	.....	.....
May 26, 1916	.....do.....	.....do.....	58,200	125.13	21.5	21.5	.....	.....
Aug. 21, 1916	Jersey City, N. J.	.....do.....	61,300	117.51	19.17	22.5	20.42	.....
Aug. 30, 1916	Philadelphia, Pa.	.....do.....	52,100	104.45	20	21.5	7.57	.....
Dec. 12, 1916	Allegheny, Pa....	.....do.....	67,900	169.75	25	26.5	10.19	.....
Dec. 2, 1916	.....do.....	.....do.....	71,100	177.75	25	26.5	10.67	.....
Jan. 18, 1917	.....do.....	.....do.....	62,400	155.99	25	26.5	9.37	.....
July 12, 1916	Boonton, N. J....	A. & C., A. C. L., N. Y. P. & N., P. B. & W., P. R. R., D. L. & W.	65,400	170.04	26	28.5	16.35	.....
Jan. 15, 1917	North Bangor, Pa.	A. & C., A. C. L., N. Y. P. & N., P. B. & W., P. & R., L. & N. E.	45,100	128.53	28.5	28.5	.....	.....
May 17, 1916	Richmond, Va....	A. & C., A. C. L..	51,500	66.95	13	15.25	11.59	.....

West is a local point on the Atlantic & Carolina Railroad, which extends from Warsaw, N. C., the junction point with the Atlantic Coast Line Railroad, through West to Kenansville, N. C., a distance of 10 miles. At the time the shipments moved a joint class P rate, governed by the southern classification, applied on lumber in carloads from West to Richmond, which was in excess of the combination rate contemporaneously in effect to and from Warsaw. No joint rates applied from West to the other destinations, the published basis being the 4½-cent local rate of the Atlantic & Carolina to Warsaw, plus the joint rates of the connecting lines beyond. On October 5, 1916, the defendants established a joint commodity rate of 13.5 cents from West to Richmond, equal to the combination based on Warsaw. The defendants established the following joint commodity rates from West to Richmond on May 1, 1917, and to the other destinations in controversy on August 18, 1917: To Richmond, 9.5 cents; Nicetown, 19.5 cents; North Philadelphia and Philadelphia, 17.5 cents; Boonton and North Bangor, 24.5 cents; Jersey City, 18.5 cents; Allegheny, 22.5 cents. These rates, which remained in effect until June 25, 1918, were one-half cent higher than the joint rates formerly applicable from Warsaw.

The rates assailed are compared by complainant with rates on like traffic to the same destinations from points on other short lines in North Carolina and South Carolina connecting with the Atlantic Coast Line, from some of which the junction point rates applied, while from others rates from ½ to 1 cent higher than the junction

point rate were applicable. Complainant shows that the joint rates contemporaneously in effect from Warsaw to these destinations also applied from stations on the main line of the Atlantic Coast Line south of Warsaw to Wilmington, N. C., 54 miles beyond, and that competing sawmills were situated at many of these stations. Also that rates one-half cent in excess of the junction point rates were contemporaneously applicable on lumber from stations on the Warsaw-Clinton branch of the Atlantic Coast Line.

Defendants' explanation of the adjustments in cases where junction point rates, or rates slightly in excess of those rates, are published from points on short-line connections, is the alleged competition between carriers. It was testified on behalf of the Atlantic Coast Line that there is no uniform basis for establishing rates to or from these short-line points, and that the present joint rates from points on the Atlantic & Carolina were established in competition with other lines operating in the same general territory to induce large sawmills to locate on the latter line.

We find that the rates legally applicable were unreasonable and unduly prejudicial to the extent that they exceeded the rates in effect prior to June 25, 1918. We further find that complainant made the shipments as described and paid and bore the charges thereon; that he has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rates herein found reasonable; and that he is entitled to reparation in the following amounts, with interest; \$34.59, including the overcharge of \$2.21 mentioned above, from the Atlantic & Carolina Railroad Company, Atlantic Coast Line Railroad Company, New York, Philadelphia & Norfolk Railroad Company, Philadelphia, Baltimore & Washington Railroad Company, and Philadelphia & Reading Railway Company; \$159.18 from the Atlantic & Carolina Railroad Company, Atlantic Coast Line Railroad Company, New York, Philadelphia & Norfolk Railroad Company, Philadelphia, Baltimore & Washington Railroad Company, and Pennsylvania Railroad Company; \$9.81 from the Atlantic & Carolina Railroad Company, Atlantic Coast Line Railroad Company, New York, Philadelphia & Norfolk Railroad Company, Philadelphia, Baltimore & Washington Railroad Company, Pennsylvania Railroad Company, and Delaware, Lackawanna & Western Railroad Company; \$18.03 from the Atlantic & Carolina Railroad Company, Atlantic Coast Line Railroad Company, New York, Philadelphia & Norfolk Railroad Company, Philadelphia, Baltimore & Washington Railroad Company, Philadelphia & Reading Railway Company, and Lehigh & New England Railroad Company; and \$18.02 from the Atlantic & Carolina Railroad Company and Atlantic Coast Line Railroad Company. Defendants are authorized to waive collection of the outstanding undercharges.

An order awarding reparation will be entered.

No. 9934.
K. T. FELDER
v.
SOUTHERN RAILWAY COMPANY.

Submitted February 26, 1918. Decided August 10, 1918.

Charges legally applicable on feldspar, in carloads, from East Point and Atlanta, Ga., to Durham and Winston-Salem, N. C., not shown to have been unreasonable. Complaint dismissed.

Adamson & Cobb for complainant.

E. R. Oliver and Claudian B. Northrop for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

By DIVISION 3:

This complaint as amended brings in issue the reasonableness of the defendant's charges on seven carloads of feldspar shipped from East Point and Atlanta, Ga., to Durham and Winston-Salem, N. C., in January, February, March, and April, 1917. Reparation is asked. Rates are stated in amounts per net ton.

The facts concerning four of the shipments were stipulated. As no evidence was introduced in connection with the remaining three shipments, they will not be considered. The four shipments, weighing 44,700, 37,700, 47,600, and 53,200 pounds, moved on January 23, March 16 and 24, and April 2, 1917, respectively over defendant's line from Atlanta, the first to Durham and the others to Winston-Salem. The Durham shipment originated at East Point, which takes the Atlanta rates, but is located on the lines of connecting carriers not named as defendants. On this shipment charges were apparently collected at a rate of \$4.80 per net ton, based on 40,000 pounds. The \$4.80 rate should have been applied to the actual weight, and there is an apparent outstanding undercharge of \$11.28. Charges were collected on each of the other three shipments in the sum of \$96, based on the applicable rate of \$2.40 per net ton, minimum 80,000 pounds. Reparation is sought on the basis of a rate of \$2.40 and a weight of 60,000 pounds, the marked capacity of the cars furnished.

The complainant desired to make shipments of feldspar to various points in an effort to determine whether or not this commodity could be utilized in the production of potash, and to that end requested the defendant to establish what are termed in the stipulation "unusually

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low " rates. On December 26, 1916, the defendant applied to us for special permission to establish on less than statutory notice a rate of \$2.40, minimum 80,000 pounds, from Atlanta to certain destinations, including Durham and Winston-Salem, the then existing rate being \$4.80, minimum 40,000 pounds. The special permission was denied, and the defendant thereupon established the reduced rate effective March 1, 1917, on statutory notice. The experiments proved unsuccessful and the defendant, having been advised that there would be no further movement, restored the former rate and minimum, effective August 30, 1917.

The defendant is willing to make refund on the four shipments on the basis of the \$2.40 rate, minimum 60,000 pounds, but, as stated in the stipulation, " is not willing to admit that the regular, normal, existing rate of \$4.80 per ton, minimum 40,000 pounds, which has been in existence for a great many years is an unreasonably high rate," nor is it willing to maintain the lower rate for the future.

The defendant conceded that it is impossible to load 80,000 pounds of feldspar into cars of 60,000 pounds capacity. It is stipulated that 80,000 pounds of feldspar can be loaded into cars of 80,000 or 100,000 pounds capacity, and that the shipper did not specify any marked capacity when ordering the cars. The total charges on the shipments at the \$2.40 rate, minimum 80,000 pounds, are less than at the \$4.80 rate and actual weight, subject to a 40,000-pound minimum. While the minimum of 80,000 pounds appears to have been too high for the cars furnished, the charges based on that minimum and the \$2.40 rate are the same as those based on the \$4.80 rate and the 40,000-pound minimum, and the record indicates that the \$2.40 rate was abnormally low. The mere willingness of the defendant to make refund is insufficient to justify an award of reparation.

We find that the charges legally applicable are not shown to have been unreasonable, and an order dismissing the complaint will be entered.

No. 9744.

ROMANN & BUSH PIG IRON & COKE COMPANY
v.
LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL

Submitted November 14, 1917. Decided October 2, 1918.

1. Tariff rule of defendants providing for the assessment of freight charges on coke in carloads from Birmingham, Ala., to Santa Ana and Los Alamitos, Cal., on basis of weights obtained at point of origin, found to have been and to be unreasonable.
2. Weighing and reweighing rules in substantial conformity with the "National Code of Rules Governing the Weighing and Reweighing of Carload Freight," prescribed in connection with shipments of coke, in carloads, from Benham, Ky., to Santa Ana and Los Alamitos. Charges assessed on shipments from and to those points found to have been based on excessive weights and reparation awarded.

W. Scott Hancock for complainant.

Arthur E. Haid for transcontinental lines.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation dealing in pig iron and coke at St. Louis, Mo. By complaint filed May 28, 1917, it alleges that the charges collected by defendants on 36 carloads of beehive oven foundry coke shipped from Benham, Ky., to Birmingham, Ala., reconsigned to Santa Ana and Los Alamitos, Cal., and there delivered between June 4 and August 21, 1915, were unreasonable in that they were computed on the basis of erroneous weights. Reparation and the establishment of reasonable weighing rules are asked.

The shipments were originally consigned from Benham to Tuffli Brothers Pig Iron & Coke Company, at Birmingham, which company sold and reconsigned them to complainant at that point. Complainant reconsigned 20 cars to Santa Ana and 16 to Los Alamitos. All of the shipments, except one, moved over the Louisville & Nashville Railroad through Birmingham to New Orleans and the lines of the Southern Pacific system beyond. The excepted car moved to Birmingham over the Louisville & Nashville and beyond to Los Alamitos over the St. Louis & San Francisco Railroad, Chicago, Rock Island & Pacific Railway, and the Southern Pacific. Charges were collected at the applicable rate of \$10.75 per net ton, composed

of the local commodity rate of \$1.75 to Birmingham, in connection with varying minima depending on the character and capacity of the car used, and the transcontinental joint commodity rate of \$9, minimum 50,000 pounds, beyond, based upon the weights obtained at Benham. The rates are not attacked. The Louisville & Nashville's local tariff to Birmingham did not contain provisions for weighing or reweighing carload shipments. In connection with the \$9 rate beyond Birmingham the tariff provided that freight charges at that rate "will be computed on basis of point of origin weights, but not less than the prescribed minimum carload weight." This provision contained in the tariff naming the rate from Birmingham affected not alone shipments from points of origin named in that tariff, but as well shipments from Benham which moved under through combination rates in instances where the said rate from Birmingham was one of the factors in the combination.

Thirty-three of the cars were reweighed at Los Angeles, Cal., and each of the shipments was reweighed at the final destinations. The origin and destination weights were based upon the difference between the actual tare and gross weights. Defendants testified that all the weighings were performed by railroad agents on railroad track scales which were inspected regularly, and that they are unable to explain the differences in weights. Complainant testified that the agent of the initial carrier at Benham informed it that these shipments were weighed while the cars were in motion, coupled at one or both ends, but it insists that the destination weights were obtained while the cars were at rest, uncoupled at both ends. The weights obtained at Los Angeles were based upon gross weights of the loaded cars less the stenciled tare weights, but the record does not show whether the cars were there weighed while moving or at rest, coupled or uncoupled.

An exhibit filed by complainant shows the gross, tare, and net weights of each car, obtained at point of origin, en route, and at destinations, as they appear upon the track-scale certificates. The weights obtained at Benham, upon the basis of which charges were assessed, range from 50,000 to 57,400 pounds per car. The weights obtained at Los Angeles average about 2,525 pounds per car less than the Benham weights, and those obtained at destinations about 1,750 pounds less than the Benham weights. Complainant testified that beehive coke at the ovens contains less than 1 per cent of moisture, and that an analysis of nine cars showed an average of about 0.55 of 1 per cent. The fact that both the Los Angeles and destination weights were materially lower than the Benham weights in our opinion demonstrates that the latter were erroneous. The actual tare weights taken both at origin and at destination were lower for

each car than the stenciled tares, and we are of opinion that the net weights obtained at destination were more reliable than those obtained at Los Angeles.

As we said in the *Weighing Investigation*, 28 I. C. C., 7, and in the *Adams Case*, 49 I. C. C., 415, the shipper has a right to a reasonable check upon the point-of-origin weights. The fact that the tariff prescribes that the point-of-origin weight will be used as the basis for assessing charges should not mean that an erroneous record of a scale weight shall govern. The tariff must be so interpreted as to permit of a correction to the actual weights at point of origin and is justifiable only as a protection to the carrier from a reduction of the charges by reason of shrinkage in transit. Because the rule as framed is susceptible of the interpretation of requiring the shipper to pay charges based on the scale record of weights at point of origin, without correction of obvious errors, we find that the provision in connection with the \$9 rate from Birmingham for the use of point-of-origin weights as applied to shipments moving from Benham on the combination through rates was and is unreasonable, and that for the future defendants should provide and apply in connection with the transportation of coke, in carloads, from and to the points in question weighing and reweighing rules in substantial conformity with the "National Code of Rules Governing the Weighing and Reweighing of Carload Freight."

We further find that the charges collected on the shipments above described were based upon excessive weights; that complainant made the said shipments and paid and bore the charges thereon; that it has been damaged to the extent that the charges paid exceeded those that would have accrued upon the basis of the net weights obtained at destinations, subject to the minima in connection with the applicable rates, and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record and complainant should prepare a statement similar to the one filed as Exhibit 1 and in accordance with rule V of the Rules of Practice, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified, we will consider the entry of an order awarding reparation.

An appropriate order will be entered.

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No. 8812.
FELIX P. BATH & COMPANY
v.
FORT WORTH & RIO GRANDE RAILWAY COMPANY
ET AL.

Submitted September 30, 1916. Decided August 10, 1918.

Switching charges at Fort Worth, Tex., on certain carloads of cotton shipped to that point from various points in Texas, there compressed and subsequently reshipped to certain interstate and foreign destinations, not shown to have been unreasonable or unduly prejudicial. Complaint dismissed.

V. M. Simon for complainants.

P. H. Wilborne for Fort Worth & Rio Grande Railway Company; St. Louis, San Francisco & Texas Railway Company; and their receivers.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainants are A. A. Bath, A. I. Gans, I. Brown, and D. Brown, copartners, engaged in buying and selling cotton at Fort Worth, Tex. By complaint, filed February 25, 1916, they allege that the charges assessed for switching certain shipments of cotton at Fort Worth, between October 26, 1914, and May 15, 1915, both inclusive, were unreasonable and unduly prejudicial. Reparation is asked.

The cotton originated at various points in Texas on the St. Louis, San Francisco & Texas Railway, hereinafter called defendant, and moved in 124 cars, together with other cotton not here considered, over defendants' line to Fort Worth, where it was switched to the plant of the Northwestern Compress Company by the Fort Worth & Denver City Railway. A charge of \$2 per loaded car was published for this switching service. Thereafter 19 carloads of compressed cotton were reshipped to Liverpool, England; 4 to Kobe, Japan; 1 to Greensboro, N. C.; and the remainder to intrastate destinations. Defendant did not participate in the outbound shipments, the movements being over other lines which served the compress, or which absorbed the outbound switching charges.

Under regulations prescribed by the Railroad Commission of Texas carriers were required to absorb foreign line switching charges on intrastate traffic. Defendant's tariffs provided that when cotton

moved interstate it would not absorb switching charges to compresses on connecting lines. As the final destination of the cotton was not known when it moved inbound, no switching charges were then assessed, but when the cotton destined to the interstate and foreign points above mentioned moved from the compress charges of \$150.54 were collected for the inbound switching, this amount being arrived at by prorating the switching charge of \$2 per car against each inbound car in the proportion that the cotton moving inbound went to make up the outbound interstate and export shipments. There was no tariff provision for such prorating. On each of the inbound cars which contained any of the cotton subsequently moved outbound to interstate or foreign destinations the switching charge of \$2 accrued under the tariffs. The record does not disclose how many of the inbound cars contained cotton so subsequently moved, and as the prorating resulted in somewhat reducing the amount of switching charges which would otherwise have accrued, complainant has not been damaged and can not recover. The practice has since been eliminated through tariff provision for absorption of the switching charge.

The allegation of unreasonableness is based upon this subsequent absorption of the inbound switching charges, and upon the fact that it is the general practice of the lines serving Fort Worth to deliver the cotton to this compress without extra charge. In substantiation of the allegation of undue prejudice, complainants testified that their competitors at Dallas, Tex., were not required to pay a switching charge on cotton reaching that point over defendant's line, there compressed and reshipped to interstate destinations and for export, and that the payment of these switching charges could have been avoided by shipping the cotton by way of Dallas instead of Fort Worth, the through rates being the same.

It was testified for defendant that it is the only line which does not reach the compress at Fort Worth, while it does reach the compress at Dallas. It was stated that the difficulties connected with assessing the switching charges on interstate traffic constituted one of the considerations which led to their subsequent absorption.

We find that the charges assailed are not shown to have been unreasonable or unduly prejudicial. An order dismissing the complaint will be entered.

No. 8851.

SIMONDS MANUFACTURING COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY.

Submitted July 15, 1916. Decided August 10, 1918.

Rate on saws, in carloads, from San Francisco, Cal., to Chicago, Ill., found to have been unreasonable. Reparation awarded.

A. F. Tarbell for complainant.

No appearance for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

The complainant, a corporation engaged in manufacturing saws at Fitchburg, Mass., alleges in its complaint filed April 20, 1916, that the rate of \$3.40 per 100 pounds charged by defendant on a carload of damaged saws shipped July 24, 1914, from San Francisco, Cal., to Chicago, Ill., was unreasonable to the extent that it exceeded a rate of \$1.50 contemporaneously applicable in the opposite direction and subsequently established over the route of movement. Reparation is asked. Rates are stated in amounts per 100 pounds.

The shipment weighed 36,580 pounds and moved over the lines of the Santa Fe system. Charges were collected in the sum of \$1,243.75 at a joint first-class rate of \$3.40, governed by the western classification and applicable to shipments in any quantity. The saws were packed in boxes, weighing 5,600 pounds; crates, weighing 27,160 pounds; and in bundles and some loose, the weights of which are not shown. When the shipment moved, the western classification rated saws n. o. i. b. n., in boxes, second class. The second-class rate then in effect was \$2.95. There was no specific rating applicable to saws when shipped in crates or bundles, but a rule in the classification provided that freight shipped in crates or bundles would take, when in crates, the next class higher than when in boxes, and when shipped in bundles one class higher than in crates. The rate assessed was, therefore, inapplicable on the saws in boxes and bundles. We are unable to determine the exact charges collectible, as the weights of the loose saws and those in bundles do not appear of record, nor have we been able to secure this information from the parties.

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Complainant's witness testified that defendant had been requested to establish the \$1.50 rate eastbound prior to the movement, but that, by reason of the fact that the saws, which had been damaged by water, were rapidly deteriorating, it became necessary to return them to the factory before the reduced rate became effective.

It was stated for complainant that the saw manufacturers are located in the east, and that the shipment in question was the first carload of saws eastbound. On October 11, 1915, a commodity rate of \$1.50 was established on this traffic, in straight or mixed carloads, over the route of movement from San Francisco to Chicago. An equal rate applied in the opposite direction, while the class rates were and are the same in both directions. On March 15, 1918, the westbound commodity rate was increased to \$1.85 and on June 24, 1918, the eastbound rate was increased to the same basis.

We find that the rates legally applicable were unreasonable to the extent that they exceeded \$1.50 per 100 pounds; that complainant made the shipment as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record, and complainant should prepare a statement showing the details of the shipment in accordance with rule V of the Rules of Practice, also specifying the date on which the charges were paid, which statement should be submitted to the defendant for verification. Upon receipt of a statement so prepared and verified, we will consider the entry of an order awarding reparation.

51 I. C. C.

No. 9915.

WALTER A. ZELNICKER SUPPLY COMPANY

v.

TOLEDO & OHIO CENTRAL RAILWAY COMPANY ET AL.

Submitted January 26, 1918. Decided August 10, 1918.

Charges legally applicable on old rails from Bowling Green, Ohio, to Hudson, N. Y., not shown to have been unreasonable. Shipment found to have been overcharged and reparation awarded.

John D. Fidler for complainant.

D. P. Connell for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

By DIVISION 3:

Complainant, a corporation dealing in railway equipment and supplies at St. Louis, Mo., alleges by complaint seasonably filed that the charges collected on a shipment of old rails forwarded on October 13, 1916, from Bowling Green, Ohio, to Hudson, N. Y., were unreasonable and prays for reparation.

The shipment, aggregating 13,200 pounds, consisted of 20 relaying rails. It was described on the bill of lading as "1 car old rail, 40,000 pounds," and moved as a carload shipment over the Toledo & Ohio Central Railway to Toledo, Ohio, and thence to destination over the New York Central Railroad.

The official classification, which governed, contained the following item:

Rails and rail ends, n. o. s.:	L. C. L.	C. L.
New or old (c. l., per gross ton 2,240 lbs., same as 2,000 lbs., min. wt. 44,800 lbs.) -----	4	6

Charges were collected in the sum of \$98.40, based on an alleged sixth-class carload rate of 24.6 cents per 100 pounds, equivalent under the terms of the classification item to \$4.92 per long ton, minimum 44,800 pounds. The sixth-class rate was 20.5 cents per 100 pounds, equivalent under the classification item to \$4.10 per long ton and therefore the correct charges at the carload rate and minimum weight would have been \$82. Complainant contends that charges should have been assessed at the less-than-carload fourth-class rate of 28.7 cents per 100 pounds, applied to the actual weight.

The record indicates that the car was one of a number ordered for loading carloads of rails and other railway material obtained from a railroad which was being dismantled. For complainant it was stated that its agent erroneously described the shipment in the bill of lading and that it was not intended for transportation as a carload shipment. But there is no evidence that the car was ordered for a less-than-carload shipment or that the initial carrier was instructed to treat it as such, and complainant admits that the shipment was not marked in accordance with defendant's rules governing less-than-carload shipments. In our opinion this was a carload shipment.

We find that the charges legally applicable are not shown to have been unreasonable, but that the charges collected were illegal to the extent that they exceeded those that would have accrued at the rate of 20.5 cents per 100 pounds, minimum 44.500 pounds. We further find that complainant made the shipment as described and paid and bore the charges thereon; that it has been damaged to the extent that the charges paid exceeded those legally applicable, and that it is entitled to reparation in the sum of \$16.40, with interest.

An order awarding reparation will be entered.

51 I. C. C.

No. 9993.

UNITED STATES GYPSUM COMPANY

v.

FORT DODGE, DES MOINES & SOUTHERN RAILROAD
COMPANY ET AL.

Submitted February 19, 1918. Decided August 10, 1918.

Rate on gypsum rock, in carloads, from Fort Dodge, Iowa, to Prospect Hill, Mo., not shown to have been unreasonable or otherwise in violation of the act. Complaint dismissed.

E. V. Wilson for complainant.

W. G. Wagner and *Charles Shackell* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

This complaint, seasonably filed, attacks the rate charged by defendants on 10 carloads of gypsum rock shipped from Fort Dodge, Iowa, to Prospect Hill, Mo., between November 30 and December 20, 1915, inclusive, as unreasonable, unduly prejudicial, and in violation of the long-and-short-haul rule of the fourth section. Reparation and the establishment of a reasonable rate are asked. Rates are stated in cents per 100 pounds as of the time of the hearing.

The shipments moved over the Fort Dodge, Des Moines & Southern Railroad to Des Moines, Iowa, and the Chicago, Burlington & Quincy Railroad beyond, 443 miles. Charges were collected at the applicable commodity rate of 12.5 cents, minimum 30,000 pounds. Complainant's principal contention is that the rate assailed was and is unreasonable to the extent that it exceeded and exceeds a rate of 10.5 cents, minimum 60,000 pounds, contemporaneously applicable on gypsum rock from Blue Rapids, Kans., to Prospect Hill, 420 miles, by way of the Missouri Pacific Railroad. Complainant explained that it intended to make these shipments from its mill at Blue Rapids; that due to temporary difficulties in mining at that point it became necessary to ship from Fort Dodge; and that no shipments have since been made from the latter point. The western classification rates crude gypsum, in carloads, class C, minimum 40,000 pounds. The class C rates from Fort Dodge and Blue Rapids to Prospect Hill are 19 and 28 cents, respectively. Complainant calls attention to the class and commodity rates between these points and

urges that, in view of the similar distances, the commodity rate from Fort Dodge should not exceed that from Blue Rapids. No evidence was adduced to show that the class and commodity rates from Fort Dodge to Prospect Hill should bear a fixed relation to each other or to the rates to the same destination from Blue Rapids. Complainant also cites carload rates on hollow building tile and wall plaster from Fort Dodge to Prospect Hill; on gypsum rock from points in Oklahoma, Michigan, and Ohio, to St. Louis, Mo., and Prospect Hill; and a rate of 10.5 cents, minimum 60,000 pounds, on gypsum rock from Fort Dodge to Hannibal, Mo., 324 miles over the route of movement, or about 73 per cent of the distance to Prospect Hill. Complainant admits that there is no movement under the latter rate, and offered no evidence as to the volume of movement or other transportation conditions affecting these rates. The mere citation of these rates is not sufficient to prove that the rate assailed was unreasonable. Substantially no evidence of undue prejudice was adduced, and the record fails to establish a violation of the fourth section as alleged.

We find that the rate assailed is not shown to have been unreasonable or otherwise in violation of the act, and an order dismissing the complaint will be entered.

51 I. C. C.

No. 8982.
LOCUST MOUNTAIN COAL COMPANY
v.
LEHIGH VALLEY RAILROAD COMPANY.

Submitted December 30, 1916. Decided October 2, 1918.

Following *Delaware, Lackawanna & Western Coal Co. v. R. R. Co.*, 46 I. C. C., 506, reparation denied on shipments of anthracite coal, in carloads, from Shenandoah, Pa., to Perth Amboy, N. J., for transshipment. Complaint dismissed.

Robert D. Jenks and *William A. Glasgow, jr.*, for complainant.
E. H. Boles and *Stewart C. Pratt* for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

The complainant attacks as unreasonable the rates charged by defendant on numerous carloads of anthracite coal shipped from Shenandoah, Pa., to Perth Amboy, N. J., prior to April 1, 1916, and prays for reparation on all shipments which moved within the statutory period. Rates are stated in amounts per long ton.

Shenandoah is in the Lehigh coal region of Pennsylvania, 147.2 miles from Perth Amboy by way of defendant's line. For some time prior to April 1, 1916, defendant's rates on anthracite coal, in carloads, from Shenandoah and other points in the Lehigh region to Perth Amboy, for transshipment, were \$1.55 on prepared sizes and \$1.40 on pea size. During the time these rates were in effect complainant made numerous shipments from its Weston Colliery, near Shenandoah, to Perth Amboy.

In *Rates for the Transportation of Anthracite Coal*, 35 I. C. C., 220, hereinafter referred to as the *Anthracite Case*, we found that the rates on anthracite coal from Shenandoah to tidewater points, including Perth Amboy, were unreasonable to the extent that they exceeded \$1.40 on prepared sizes and \$1.30 on pea size, which rates were prescribed as reasonable maximum rates and became effective April 1, 1916. Complainant contends that the rates charged prior to April 1, 1916, were unreasonable to the extent that they exceeded the rates found reasonable in the *Anthracite Case*.

The identical question here presented was before us in *Delaware, Lackawanna & Western Coal Co. v. R. R. Co.*, 46 I. C. C., 506, wherein we denied reparation. Following that case and for the reasons stated therein, reparation is denied here.

An order dismissing the complaint will be entered.

No. 9891.

MORENO-BURKHAM CONSTRUCTION COMPANY
v.
ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted December 3, 1917. Decided October 2, 1918.

Rate on a contractor's outfit, in carloads, from McComb, Miss., to Walnut Ridge, Ark., not shown to have been unreasonable. Complaint dismissed.

Erd & Thomann for complainant.

A. P. Humburg and *B. H. Stanage* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

The charges collected on a contractor's outfit shipped during April, 1917, from McComb, Miss., to Walnut Ridge, Ark., are assailed herein as unreasonable, and reparation and the establishment of a reasonable rate asked. Rates are stated in cents per 100 pounds.

The shipment, aggregating 99,800 pounds, consisted of a No. 1 Austin trenching machine, a small concrete mixer, back filler, ditching chain and teeth, wheelbarrows, and other miscellaneous tools and equipment making up a contractor's outfit. It was loaded on two cars and moved over the Illinois Central Railroad from McComb to Memphis, Tenn., 289 miles, and thence over the St. Louis-San Francisco Railway to destination, 88 miles. Charges were collected in the sum of \$598.80 at the legally applicable combination carload rate of 60 cents, composed of the sixth-class rate of 34 cents to Memphis and the class A rate of 26 cents beyond, these rates being governed by the southern and western classifications, respectively.

Complainant does not attack the classification ratings, its contention being merely that the total charges collected were excessive for

the service rendered. It cited two or three rates applicable on similar shipments in various parts of the country, including a rate of 14.7 cents charged on a similar outfit for a haul of 242 miles from Sparta, Ill., to La Fayette, Ind., during April, 1917. The transportation conditions under which the rates cited applied were so dissimilar from those affecting the rate under attack as to render the comparisons of no probative value. No evidence was presented of a similar shipment ever having moved from and to the points mentioned, and it appears that there is no probability of a future movement of this character. Defendants contend that in view of the infrequent movement of shipments of this kind from and to the territories concerned the establishment of commodity rates is not justified.

The sixth-class rate charged to Memphis compares favorably with similar rates contemporaneously in effect from other points in the southeast to Memphis for approximately the same distance. The class A rate from Memphis to Walnut Ridge is slightly less than the maximum rate fixed as reasonable in *City of Memphis v. C. R. I. & P. Ry. Co.*, 43 I. C. C., 121, for a haul of 88 miles from Memphis to points in Arkansas. In *Dulweber Co. v. Y. & M. V. R. R. Co.*, 45 I. C. C., 549, we found that the combination rate of 53 cents charged on secondhand sawmill machinery from Nettleton, Ark., to Moorhead, Miss., a distance of 189 miles, composed of the class A rate of 24 cents to Memphis and the sixth-class rate of 29 cents beyond, was not shown to have been unreasonable.

We find that the rate assailed is not shown to have been unreasonable, and an order dismissing the complaint will be entered.

51 I. C. C.

No. 9199.

STANDARD OIL COMPANY (KENTUCKY)

v.

NEW YORK CENTRAL RAILROAD COMPANY ET AL.

PORTIONS OF FOURTH SECTION APPLICATIONS

Nos. 1548, 1952, 3965, 2060.

Submitted February 7, 1917. Decided October 2, 1918.

1. Rates on petroleum refined oil, in tank-car loads, from Franklin, Pa., to certain points in Kentucky found to have been unreasonable. Reparation awarded.
2. Fourth section relief denied.

Charles Van Overbeke for complainant.

N. H. Anspach for New York Central Railroad Company, and Cleveland, Cincinnati, Chicago & St. Louis Railway Company; *J. M. Dewberry* for Louisville & Nashville Railroad Company; *Fred H. Behring* for Southern Railway Company; and *F. S. Reigel* for Southern Railway Company, and Cincinnati, New Orleans & Texas Pacific Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

The complainant, a corporation dealing in petroleum and its products at Louisville, Ky., alleges by complaint, seasonably filed, that the rates charged by defendants on 22 tank-car loads of petroleum refined oil, shipped between November 6 and December 22, 1915, inclusive, from Franklin, Pa., to Cynthiana and various other destinations in Kentucky, were unreasonable and in violation of the fourth section to the extent that they exceeded the lowest aggregate of intermediate rates. Reparation is asked. Rates are stated in cents per 100 pounds.

51 I. C. C.

The following table shows the essential details of the shipments:

¹ No joint rates were in effect, but defendant's tariffs provided specifically for the construction of through rates by combinations on the Ohio River.

² Based on Paris.

³ Based on Winchester.

⁴ Based on Lexington.

⁵ Overcharge, \$23.72.

In *Through Rates from Buffalo-Pittsburgh Territory*, 36 I. C. C., 325, we held that the carriers had not justified the continuance of rates on through shipments from central freight association and Buffalo-Pittsburgh territories to points south of the Ohio River and east of the Mississippi River which exceeded the aggregates of the intermediate rates, and denied relief from the provisions of the fourth section. Effective February 1, 1916, following that decision, defendants' tariffs were amended to provide for the construction of through rates from Franklin to the destinations named on the basis of the lowest combinations.

For the defendants operating south of the Ohio River a willingness was expressed to participate in making reparation on the basis claimed, but it was urged that the defendants north of the Ohio River should receive only their proportion of the rates to the Kentucky junction points. The question of divisions is apart from the reasonableness of the rates assailed and can not be determined upon this record.

We find that the rates legally applicable were unreasonable to the extent that they exceeded the aggregates of the intermediate rates

to and from the Kentucky junction points named. We further find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rates herein found reasonable; and that it is entitled to reparation in the sums shown below, with interest, which include the overcharge above mentioned:

From the New York Central Railroad Company, Cleveland, Cincinnati, Chicago & St. Louis Railway Company, and Louisville & Nashville Railroad Company-----	\$323.38
From the New York Central Railroad Company, Cleveland, Cincinnati, Chicago & St. Louis Railway Company, and the Cincinnati, New Orleans & Texas Pacific Railway Company-----	45.09
From the New York Central Railroad Company, Cleveland, Cincinnati, Chicago & St. Louis Railway Company, Cincinnati, New Orleans & Texas Pacific Railway Company, and Southern Railway Company---	63.06

Those portions of Fourth Section Applications Nos. 1548 of the Southern Railway, 1952 of the Louisville & Nashville Railroad, 3965 of the Cincinnati, New Orleans & Texas Pacific Railway, and 2060 of J. F. Tucker, agent, in which authority is sought to continue rates on petroleum refined oil from Franklin to Cynthiana, Jackson, Lancaster, Richmond, London, Somerset, Burnside, Junction City, Moreland, Lawrenceburg, and Harrodsburg lower than the rates contemporaneously applicable on petroleum refined oil from or to intermediate points, were heard with this case. It was explained for the defendants that commodity rates conforming to fourth-section requirements had not been established to many intermediate points because of the lack of facilities at such points for handling oil in tank cars; that the rates published in conformity with *Petroleum to Kentucky Stations*, 43 I. C. C., 35, and *Board of Commerce, Lexington, Ky., v. C., N. O. & T. P. Ry. Co.*, 44 I. C. C., 407, corrected many former fourth-section departures; and that the rules and principles announced in *Fourth Section Violations in the Southeast*, 30 I. C. C., 153, 154; 32 I. C. C., 61, would be observed in removing any existing departures. The applications will be denied to the extent that they are concerned.

Appropriate orders will be entered.

No. 9176.
DELAWARE PUNCH COMPANY OF TEXAS
v.
INTERNATIONAL & GREAT NORTHERN RAILWAY
COMPANY ET AL.

Submitted May 12, 1917. Decided August 10, 1918.

Reparation on less-than-carload shipments of Delaware punch sirup from San Antonio, Tex., to various interstate destinations denied. Complaint dismissed.

J. M. Elder for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

The complainant herein attacks the rates charged by defendants on certain less-than-carload shipments of Delaware punch sirup, forwarded from San Antonio, Tex., to Phoenix, Globe, Morenci, and Jerome, Ariz., Greenwood, Miss., and New Orleans, La., between July 9 and October 15, 1915, as illegal, unreasonable, and unduly prejudicial and prays for reparation. It is alleged in the complaint that certain of the shipments were in glass packed in crates or boxes, and that others were in bulk in barrels. The evidence was confined to shipments in glass containers covered with corrugated cardboard. One was packed in boxes, but it is not shown whether the others were in boxes or in crates. Rates are stated in amounts per 100 pounds.

Complainant's case is based on an erroneous tariff interpretation, so that its evidence is of little value. Charges were collected on some of the shipments at the first or second class rates, and on the remainder at rates not stated or which we can not verify. There were and are no commodity rates on Delaware punch sirup from and to the points named. It is complainant's impression that the applicable rating under the western classification, which governed, was fourth class on flavoring and fruit sirups "in earthenware packed in crates, or in barrels or boxes, l. c. l." But this provision was canceled on June 15, 1915, and although it was printed in supplements to the classification until October 15, 1915, when it was finally eliminated, it was not effective subsequent to June 15, 1915. The following ratings on less-than-carload shipments of flavoring sirup became effective in the western classification on that date: "In glass or earthenware, packed in barrels

or boxes,” second class, and “in bulk in barrels” second class. A rule of the classification provided and provides that articles rated in boxes will take the next class higher when shipped in crates. The following rates, in effect at the time of movement, were legally applicable to the shipments in question, depending on the way they were packed, except those to Globe and Morenci:

From San Antonio to—	First class.	Second class.	From San Antonio to—	First class.	Second class.
Phoenix.....	\$2.30	\$2.00	Jerome.....	¹ \$2.58	¹ \$2.25
Globe.....	3.00	2.60	Greenwood.....	1.37	1.15
Morenci.....	2.82	2.48	New Orleans.....	1.37	1.15

¹ Combination on Jerome Junction, Ariz.

The tariff publishing the rates to Globe and Morenci provided that if the aggregate of the intermediate rates should be lower than the through rates, such combination rates would apply. The following combination rates made up of the fourth-class rates from San Antonio to El Paso, Tex., governed by the Texas classification, under which flavoring sirup in glass, in boxes, or in glass protected with corrugated fiber or strawboard in crates was rated fourth class in less than carloads, and combination first and second class rates, governed by the western classification, beyond, were legally applicable:

	In crates.	In boxes.
TO GLOBE.		
From San Antonio to El Paso, Tex.....	\$0.78	\$0.78
From El Paso to Bowie, Ariz.....	1.10	.95
From Bowie to Globe.....	.70	.60
Total.....	2.58	2.34
TO MORENCI.		
From San Antonio to El Paso, Tex.....	.78	.78
From El Paso to Lordsburg, N. Mex.....	.85	.73
From Lordsburg to Guthrie, Ariz.....	.39	.36
Transfer at Guthrie.....	.05	.05
From Guthrie to Morenci.....	.14	.13
Total.....	2.21	2.05

In *Delaware Punch Co. of Tex. v. G. H. & S. A. Ry. Co.*, 49 I. C. C., 131, we found that the defendants had justified the second-class rating, governed by the western classification, on flavoring sirup in glass or earthenware packed in barrels or boxes, in less-than-carloads, but that a reasonable rating on less-than-carload shipments in bulk in barrels would be third class. This record affords no basis for a different finding, and as the order in the case cited has been complied with by amending the western classification, no further order is necessary. Reparation was denied in that case, and none will be awarded here. The charges should be adjusted on the basis of the applicable rates.

An order dismissing the complaint will be entered.

No. 9435.

S. SCHWARTZ

v.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY ET AL.

Submitted May 23, 1917. Decided August 10, 1918.

Rates applied by defendants on two carloads of old boiler flues and scrap boiler plate from Port Arthur, Tex., to St. Louis, Mo., found to have been legally applicable. Complaint dismissed.

Louis Mayer for complainant.

Arthur E. Haid for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is engaged in the scrap-iron business at St. Louis, Mo. By complaint, filed January 8, 1917, he alleges that the charges assessed on two carloads of "scrap iron" forwarded from Port Arthur, Tex., to St. Louis, October 30 and November 24, 1916, respectively, were illegal. Relief from liability for certain unpaid freight charges demanded by defendants is sought. Rates are stated in cents per 100 pounds.

The first shipment, weighing 94,200 pounds, consisted of old boiler flues and tubes, ranging in length from about 4 feet to 16 feet; the second, weighing 71,800 pounds, consisted of similar flues and tubes and also of miscellaneous pieces of iron, including old boiler plate. They were billed as scrap iron and were originally consigned to Houston, Tex., but were reconsigned to St. Louis, and moved over the Texas & New Orleans Railroad to Houston; Houston & Texas Central Railroad to Dallas, Tex.; and the St. Louis, San Francisco & Texas and the St. Louis-San Francisco railways beyond. Upon the arrival of the shipments at St. Louis they were inspected by a representative of the Western Weighing and Inspection Bureau who changed the billing covering the first shipment to read "secondhand boiler flues and tubes," and of the second to read "35,800 pounds of scrap iron and 36,000 pounds of secondhand boiler flues and tubes." The rate legally applicable on scrap iron, in carloads, was a commodity rate of 24 cents, minimum 40,000 pounds, while the fifth-class

rate of 75 cents, minimum 36,000 pounds, applied on boiler flues and tubes. There was no specific rating or rate on secondhand or old boiler flues and tubes. Charges were assessed on the basis of the changed billing, but complainant, insisting that each shipment consisted entirely of scrap iron, refused to pay any charges in addition to those which accrued under the original billing. After some controversy, the shipments were delivered to complainant upon the basis of the 24-cent rate, with the understanding that the matter would be submitted to us. A reconsigning charge of \$2 collected on each shipment is not in issue. The sole question presented is, Were the old boiler flues and tubes properly described as scrap iron?

Complainant's witnesses, men of long experience in the manufacture of boilers, testified that the flues contained in these cars were damaged to such an extent as to render them unfit for further use in the manufacture or repair of boilers, but admitted that they were in such shape and condition that, after being cleaned, trimmed, and otherwise reconditioned, they could be utilized, without remelting, as pipe, fence posts, or for other purposes.

Complainant sold the shipments to a dealer in scrap iron and secondhand iron articles at St. Louis, who segregated most of the flues and tubes from the ordinary scrap pile and also from that portion of the second shipment which was admittedly scrap iron. This dealer reworked some of the material and sold it as secondhand pipe. He also sold about 16,000 pounds from each car to a firm at Bartlesville, Okla., under specifications calling for lengths of 10 feet or more. The Bartlesville firm has no facilities for remelting iron but operates a plant for reconditioning this class of material for use as secondhand pipe.

Rates on scrap iron are understood generally to apply on scraps or pieces of iron or steel having value for remelting purposes only, and the western classification, which governed the tariff naming the 24-cent rate on scrap iron, carried a note to that effect under the description of scrap iron. Iron or steel articles which have a recognized commercial value other than that of the elementary metal from which they are manufactured are not properly described as scrap iron.

Complainant cites *Producers' Supply Co. v. Midland Valley R. R. Co.*, Docket No. 7322, unreported, in which we held that a shipment of old iron pipe and boiler tubes consisted of scrap iron. But in that case it was shown that the material had been damaged to such an extent by previous use that it had no value except for remelting.

We find that the boiler flues and tubes are not shown to have consisted of scrap iron, and that the charges assailed were legally applicable.

An order dismissing the complaint will be entered.

No. 9439.

W. S. PENICK AND J. P. FORD, LIQUIDATORS, INTERNATIONAL MOLASSES COMPANY,

v.

MORGAN'S LOUISIANA & TEXAS RAILROAD & STEAMSHIP COMPANY ET AL.

Submitted April 4, 1917. Decided August 10, 1918.

Five tank-car loads of imported blackstrap molasses from Harvey, La., to St. Louis, Mo., and East St. Louis, Ill., found to have been misrouted. Reparation awarded.

Esmond Phelps for complainants.

C. W. Owen for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

By DIVISION 3:

Complainants are liquidators of the International Molasses Company, a corporation formerly engaged in buying and selling molasses at New Orleans, La. By complaint, filed January 8, 1917, they allege that due to misrouting by defendant, Morgan's Louisiana & Texas Railroad & Steamship Company, hereinafter called the Morgan line, the charges collected by defendants on five tank-car loads of imported blackstrap molasses shipped from Harvey, La., to St. Louis, Mo., and East St. Louis, Ill., between May 20 and 23, 1914, inclusive, were unreasonable. Reparation is asked. The claim was presented to the Commission informally January 21, 1916. Rates are stated in cents per 100 pounds.

Harvey is located on the west bank of the Mississippi River opposite to and within the port limits of New Orleans. The rails of the Illinois Central Railroad reach New Orleans but not Harvey, connection with the latter point being had only by means of the car ferries operated by the Morgan line and the Texas & Pacific Railway.

The shipments were routed by the shipper over the lines of the Southern Pacific Company to New Orleans and Illinois Central Railroad beyond, except that in connection with one shipment the Chicago, Burlington & Quincy Railroad was shown as the delivering line; and a rate of 15 cents was inserted in the bills of lading. The term Southern Pacific was used to designate the Morgan line, which is a part of the Southern Pacific system. Each of the bills of lading bore a notation that the shipment consisted of imported black-

strap molasses agreed to be of a value of 8 cents or less per gallon. The agent of the Morgan line ignored the shipper's routing instructions and, without its knowledge or consent, forwarded the shipments over the Morgan line to Alexandria, La., and the St. Louis, Iron Mountain & Southern Railway beyond. Charges were ultimately collected at a rate of 21 cents, legally applicable over the route of movement. Had the shipments been delivered by the Morgan line to the Illinois Central at New Orleans for transportation beyond in accordance with the shipper's routing instructions, a rate of 15 cents would have been applicable. The Morgan line was not a party to this rate, but the tariffs of the Illinois Central provided for the absorption of the former's switching charges at New Orleans.

The only reason advanced for the Morgan line's failure to comply with the shipper's routing instructions was that as the shipments moved under through bills of lading it considered that to have handled them in accordance with the shipper's instructions would have defeated the integrity of the through rate of 21 cents to which it was a party. Effective April 8, 1915, an import rate of 15 cents was established over the route of movement. The minimum carload weight under the 21-cent rate was 50,000 pounds, and charges were collected on the basis of an aggregate actual weight of 429,961 pounds. Under the 15-cent rate in connection with the Illinois Central the carload minimum was the marked capacity of the tank.

We find that Morgan's Louisiana & Texas Railroad & Steamship Company misrouted the shipments; that the International Molasses Company paid and bore the charges thereon, and was damaged by the misrouting to the extent of the difference between the charges paid and those that would have accrued had the shipments been forwarded by way of the route over which the rate of 15 cents per 100 pounds applied; and that complainants, its liquidators, are entitled to reparation from Morgan's Louisiana & Texas Railroad & Steamship Company, with interest. The exact amount of reparation due can not be determined upon the present record, and complainants should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice and also showing the marked capacity of each car used. This statement should be submitted to Morgan's Louisiana & Texas Railroad & Steamship Company for verification. Upon receipt of a statement so prepared and verified, we will consider the entry of an order awarding reparation.

No. 9539.

ADVANCE LUMBER COMPANY

v.

SEABOARD AIR LINE RAILWAY COMPANY ET AL.

Submitted August 6, 1917. Decided August 10, 1918.

Charges on pine lumber, in carloads, from Coal City, Ala., to Cairo, Ill., diverted to Carpenter, Ill., and subsequently to Toledo, Ohio, found to have been unreasonable. Reparation awarded.

O. L. Bunn for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in the wholesale lumber business at Birmingham, Ala. By complaint filed July 31, 1916, it alleges that an unreasonable rate was charged by defendants on a carload of pine lumber shipped in August, 1914, from Coal City, Ala., to Toledo, Ohio. Reparation is asked. Rates are stated in cents per 100 pounds.

Coal City is a local station on the Seaboard Air Line Railway, 38 miles east of Birmingham. The shipment was originally consigned to Cairo, Ill., to which point it moved as routed over the line of the initial carrier to Birmingham, and thence over the Illinois Central Railroad. Prior to the arrival of the car at Cairo, complainant ordered it diverted to Carpenter, Ill., and while en route to that point it was diverted to Toledo. From Cairo it moved as routed by complainant over the Illinois Central to East St. Louis and beyond over the Wabash Railroad. The shipment weighed 53,000 pounds and charges were collected in the sum of \$169.60 at a combination rate of 32 cents, legally applicable, composed of a local rate of 6 cents to Birmingham, and a joint rate of 26 cents beyond.

On April 1, 1914, a joint rate of 26 cents, which had theretofore applied over the route of movement from Coal City to Toledo, was canceled. As the rate assailed represents an increase since January 1, 1910, the burden of justifying it rests upon the defendants. They were not represented at the hearing.

When the shipment moved a joint rate of 26 cents applied from Coal City to Toledo over the Queen & Crescent route through Cincinnati, Ohio; also to Toledo, through Birmingham, in connection with the Illinois Central and Wabash from a number of points in the vicinity of Coal City on the lines of other carriers. On December 12, 1914, that rate was reestablished from Coal City to Toledo over the route of movement. On March 16, 1917, it was increased to 27.7 cents.

We find that the rate assailed was unreasonable to the extent that it exceeded 26 cents per 100 pounds. The Illinois Central and Wabash permitted diversion without additional charge at Cairo and Carpenter, respectively, in connection with the joint rate formerly in effect from Coal City to Toledo; also in connection with the joint rate now in effect over the route the shipment moved. Where a reasonable rate is prescribed for a transportation service reparation will not be awarded to the basis of that rate on shipments which have been diverted or reconsigned, but there will be taken into consideration a reasonable maximum charge for the additional service performed. Upon this record and following *Kern & Sons v. C., M. & St. P. Ry. Co.*, 40 I. C. C., 552, and the *Reconsignment Case*, 47 I. C. C., 590, we further find that \$2 would have been a reasonable maximum charge for each of the diversions; that complainant made the shipment as described and bore the charges thereon in excess of those that would have accrued upon the basis herein found reasonable; and that it was damaged and is entitled to reparation in the sum of \$27.80, with interest.

An order awarding reparation will be entered.

51 I. C. C.

No. 9640.

EMPIRE REFINERIES, INCORPORATED,
v.
ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY ET AL.

Submitted July 20, 1917. Decided August 10, 1918.

Rate on fuel oil, in tank-car loads, from Okmulgee, Okla., to Kenedy, Tex., found to have been unreasonable. Reparation awarded.

E. N. Adams for complainant.

R. R. Lethem for St. Louis-San Francisco Railway Company.

P. T. McKirahan for Gulf, Colorado & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in refining oil at Tulsa, Okla., and is the successor in interest to the American Refining Company. By complaint filed April 21, 1917, as amended, it alleges that the rate of 37 cents per 100 pounds charged by defendants on a tank-car load of fuel oil shipped November 22, 1913, from Okmulgee, Okla., to Kenedy, Tex., was unreasonable, unduly prejudicial, and in violation of the fourth section of the act. Reparation is asked. The claim was presented to the Commission informally July 29, 1915. Rates are stated in cents per 100 pounds.

The shipment, weighing 59,851 pounds, moved over defendants' lines, a distance of 598 miles. Charges were collected in the sum of \$221.44 at a rate of 37 cents. The rate legally applicable was the joint fifth-class rate of 70 cents, governed by the western classification, so that the shipment was undercharged 33 cents per 100 pounds. At the time the shipment moved a commodity rate of 25 cents applied on fuel oil to Kenedy from numerous points in the Oklahoma oil-producing group in which Okmulgee is situated, including the following: Muskogee, 572 miles; Bartlesville, 704 miles; Dewey, 708 miles; Yale, 595 miles; and Cleveland, 659 miles. On February 23, 1915, this rate was established from Okmulgee over the route of movement. On the same date a commodity rate of 20 cents was established from Okmulgee to various points, including Sinton, Tex., to which Kenedy is intermediate over the route of movement. The

maintenance of a lower rate to Sinton than to Kenedy constitutes a departure from the long-and-short haul rule of the fourth section, which was and is unauthorized and therefore unlawful.

It was testified for the St. Louis-San Francisco Railway Company that the rate from Okmulgee to Kenedy was reduced to 25 cents in order to line it up with other rates in the same territory, and no attempt was made to defend a rate in excess of that subsequently established. The Gulf, Colorado & Santa Fe Railway Company, the only other defendant represented at the hearing, offered no evidence. No substantial evidence of undue prejudice was adduced. The 25-cent rate yields approximately 8.36 mills per ton-mile and 25 cents per car-mile.

We find that the rate assailed was unreasonable to the extent that it exceeded 25 cents per 100 pounds; that the American Refining Company made the said shipment and paid and bore the charges thereon herein found unreasonable; that it was damaged to the extent of the difference between the charges collected and those that would have accrued at the rate herein found reasonable; and that complainant, its successor, is entitled to reparation in the sum of \$71.81, with interest. Collection of the undercharge above mentioned may be waived.

An order awarding reparation will be entered.

51 I. C. C.

No. 9673.

WILSON & COMPANY, INCORPORATED,
v.
CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS
RAILWAY COMPANY.

Submitted July 16, 1917. Decided August 10, 1918.

Charges on meat in peddler cars, in less than carloads, from Chicago to certain points in Indiana and Ohio found to have been unreasonable. Reparation awarded.

W. R. Brown for complainant.

R. D. Hunter for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in the packing-house business at Chicago, Ill., and is the successor in interest of Sulzberger & Sons Company. By complaint, filed May 2, 1917, it alleges that the charges collected for the transportation of certain shipments of meat in peddler cars from Chicago to Muncie and New Castle, Ind., and Middletown, Ohio, between August 7, 1914, and January 22, 1915, were unreasonable. Reparation is asked. The claim was presented to the Commission informally July 22, 1916.

The shipments moved as alleged. It appears that the aggregate weight of the various consignments in each car was less than 20,000 pounds; that charges were assessed at the less-than-carload rates on the actual weight of each consignment to the respective destinations, plus charges based upon the difference between the combined actual weight in each car and the minimum of 20,000 pounds at the carload rates applicable to dressed beef to the farthest destination of any consignment in the car. These charges were legally applicable under a tariff rule which became effective June 15, 1914. On February 10, 1915, the rule was amended so as to provide a minimum aggregate charge per car on the basis of 20,000 pounds at the carload rates on dressed beef from point of origin to the farthest destination of any article in the car, and further that "in case charges on the several consignments to the respective destinations at the less-than-carload

rate do not aggregate the above minimum the difference to make the required minimum charge must be added." Rules substantially similar to this have been maintained up to the present time. Complainant seeks reparation on the basis of the subsequently established rule.

For defendant it was stated that the rule was in error in that it did not correctly define the basis intended and that the charges assessed were unreasonable in so far as they exceeded the charges that would have accrued under the subsequently established rule.

We find the defendant's tariff rule in effect when the shipments moved was unreasonable and that the charges collected thereunder were unreasonable to the extent that they exceeded those that would have accrued at the carload rates on dressed beef, minimum 20,000 pounds, contemporaneously in effect from Chicago to the farthest destination of any consignment in each car respectively. We further find that complainant's predecessor made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued on the basis herein found reasonable; and entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record and complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to defendant for verification. Upon receipt of a statement so prepared and verified, we will consider the entry of an order awarding reparation.

51 I. C. C.

No. 9724.

ST. MATTHEWS PRODUCE EXCHANGE ET AL.

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

Submitted September 15, 1917. Decided August 10, 1918.

Rates effective during July, August, and September, 1915, on onions and potatoes, in carloads, in sacks, bulk, or barrels, from St. Matthews and O'Bannon, Ky., to points in southeastern and Mississippi Valley territories found justified, and from Lyndon and Glenarm, Ky., not shown to have been unreasonable, unduly prejudicial or unjustly discriminatory. Complaint dismissed.

L. S. Stanton, jr., for complainants.

W. A. Northcutt and *Edw. D. Mohr* for Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

It is alleged by complaint, seasonably filed, that the rates charged by defendants on numerous carloads of potatoes and onions, in sacks, bulk, or barrels, shipped during July, August, and September, 1915, from St. Matthews, Lyndon, O'Bannon, and Glenarm, Ky., to New Orleans, La., and Meridian, Miss., in Mississippi Valley territory, to Birmingham and Montgomery, Ala., in southeastern territory, and to certain other points in those territories, were unreasonable and unjustly discriminatory to the extent that they exceeded the rates contemporaneously maintained on like traffic in bulk or barrels to the same destinations from Louisville, Ky., and from stations on the Illinois Central Railroad and Southern Railway in the vicinity of and taking the same rates as Louisville. Reparation is asked. Rates are stated in cents per 100 pounds.

The points of origin are northeast of Louisville on the Cincinnati division of the Louisville & Nashville Railroad, hereinafter termed the defendant. In *St. Matthews Produce Exchange v. L. & N. R. R. Co.*, 32 I. C. C., 233, we considered the rates on potatoes and onions, in carloads, from stations St. Matthews to O'Bannon, inclusive, to stations in central freight association, southeastern, southwestern, and Mississippi Valley territories, which were alleged to be unreason-

able and unjustly discriminatory as compared with the rates from Louisville and points on the Illinois Central and Southern taking the same rates. The rates assailed were from 2 to 5 cents higher than from Louisville on shipments moving through Cincinnati, Ohio, but not by way of Louisville, to eastern central freight association territory; from 5 to 7 cents higher on shipments moving through Louisville to western central freight association territory; and ranged from the Louisville rates to 5 cents higher than those rates on shipments moving through Louisville to the southeast and to the Mississippi Valley. Rates from Glenarm, 6 miles north of O'Bannon, were not in issue, but that point took the same rate as O'Bannon. We held that the facts of record did not warrant a finding that the charges assessed to Cincinnati or through that point to central freight association territory were unreasonable or unjustly discriminatory; but that the charging of the full locals to Louisville, ranging from 5 to 7 cents, as part of through rates on traffic destined to interstate points beyond was unreasonable and unjustly discriminatory and prescribed maximum rates to Louisville on such traffic of 3 cents from St. Matthews and Lyndon and 5 cents from O'Bannon.

The arbitraries over Louisville on traffic to the southeast and the Mississippi Valley did not exceed and in some instances were lower than the maxima prescribed. Effective February 1, 1915, the defendant, in readjusting its rates following the case cited, increased those arbitraries which were on the lower basis to the maximum basis. On January 1, 1916, the Louisville rates were made applicable on this traffic from all of the points of origin. The resultant rate changes follow, the figures shown other than distances being arbitraries over Louisville:

From—	To points in southeastern territory.				To points in Mississippi Valley territory.		
	Miles. ¹	July 1, 1914.	Feb. 1, 1915.	Jan. 1, 1916.	July 1, 1914.	Feb. 1, 1915.	Jan. 1, 1916.
		Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
St. Matthews.....	5	² 2	3	(8)	(8)	3	(8)
Lyndon.....	8	3	3	(8)	3	3	(8)
O'Bannon.....	14	4	5	(8)	4	5	(8)
Glenarm.....	20	5	5	(8)	5	5	(8)

¹ To Louisville. ² But not to exceed Cincinnati rates. ³ Louisville rates.

The complainants contend that our report and order in the case cited referred only to rates on traffic moving through Louisville on the Louisville combination; that the defendant was not justified in applying higher rates from the points of origin named than from Louisville on traffic destined to southeastern and Mississippi Valley points on which the defendant received the long haul, but that our

report and order contemplated the establishment of Louisville rates on such traffic; and that this was recognized by the defendant by the establishment on January 1, 1916, of rates on the Louisville basis. We find no merit in this contention. The report clearly shows that the reasonableness and propriety of the rates to Louisville on traffic destined to the southeastern and Mississippi Valley territories were fully considered. As the rates then in effect on traffic destined to those territories did not exceed the maxima they were not condemned, but our order prescribed maximum rates on traffic moving through Louisville, whether to the south or to central freight association territory. No evidence was introduced in the present proceeding which would justify a different conclusion. It is stated for the defendant that the reduction effective January 1, 1916, resulted from competitive conditions created by the drayage of the produce to Louisville and to the Southern Railway stations taking the Louisville rates, and that in view of increases in the rates from Louisville to the southeast effective on that date it was enabled to make the reduction, in so far as that territory is concerned, without any substantial loss of revenue.

Following the case cited and upon the facts of record in this case, we find that the increased rates in effect at the time the shipments moved have been justified, and that the other rates assailed are not shown to have been unreasonable, unduly prejudicial or unjustly discriminatory.

An order dismissing the complaint will be entered.

51 I. C. C.

No. 9741.

LORETZ, PEGRAM & COMPANY

v.

SOUTHERN PACIFIC COMPANY ET AL.

Submitted February 25, 1913. Decided October 2, 1918.

Refrigeration charges on a carload of peaches from El Paso, Tex., to Globe, Ariz., not shown to have been unreasonable. Complaint dismissed.

Rufus B. Daniel for complainant.

R. C. Dearborn and *H. C. Hallmark* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

The refrigeration charges collected by the defendants on a carload of peaches, shipped July 19, 1915, from Jacksonville, Tex., to El Paso, Tex., and subsequently reshipped to Globe, Ariz., are attacked herein as unreasonable and reparation is asked.

The shipment, aggregating 21,704 pounds, consisted of 448 crates and 200 baskets of peaches. It was originally consigned from Jacksonville to El Paso, where it arrived over the Texas & Pacific Railway on the morning of July 23, 1915, and was placed for delivery on the team tracks of that carrier. The car was iced at point of origin, re-iced three times in transit up to El Paso, and again at El Paso, where 200 crates of peaches were added. On the afternoon of July 23, 1915, the car was switched to the Galveston, Harrisburg & San Antonio Railway, consigned by complainant to its agent at Globe under a new bill of lading issued by that carrier. El Paso is 787 miles from Jacksonville and 321 miles from Globe. A refrigeration charge of \$35 per car, prescribed by the railroad commission of Texas, was collected for the service to El Paso, and \$74.62, at a rate of 32.5 cents per 100 pounds, based on 22,960 pounds, for the refrigeration service beyond El Paso.

It was urged on behalf of complainant that the movement from Jacksonville through El Paso to Globe was interstate and that the charges collected were unreasonable to the extent that they exceeded charges based on a through refrigeration charge of 32.5 cents per

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100 pounds, minimum 20,000 pounds, contemporaneously in effect between Jacksonville and Globe; that if the shipment outbound from El Paso was separate and distinct from the inbound one, the refrigeration charges beyond El Paso were unreasonable to the extent that they exceeded a precooling charge of not more than \$7.50; that no instructions were given the defendants to refrigerate the shipment from El Paso and no charges therefor should have been assessed; and that the refrigeration charges from El Paso were unreasonable to the extent that they exceeded the charges to El Paso. The freight rates are not in issue.

In our opinion the movement from Jacksonville to El Paso was intrastate, and therefore beyond our jurisdiction. No evidence was introduced concerning the precooling charge and its relation to the refrigeration charge in issue. The bill of lading on the shipment from El Paso contained the notation "car received under refrigeration; bunkers full." The complainant apparently assumes that no additional refrigeration was necessary, inasmuch as the bunkers were filled when the car left El Paso. To this the defendants reply that it is immaterial whether complainant asked to have the car reiced in transit, or whether it was or was not re-iced. This witness testified that all refrigerator cars are examined and, if necessary, re-iced at regular re-icing stations. It was observed that any other course would demoralize defendants' refrigeration service and prevent them from discharging their duty with economy and efficiency. Actual cost figures of the refrigeration service from El Paso to Globe were not available, because of the infrequency of the service between these points, but the defendants estimate that about $7\frac{1}{2}$ tons of ice, costing \$3.50 per ton, would be required to ice a carload of peaches before and after loading; that about 2 tons of ice would be necessary to re-ice the car at Deming or Lordsburg, N. Mex., the cost on the platform at Deming being \$11 per ton and at Lordsburg \$10 per ton, plus \$5 per ton for placing in the bunkers; and that an additional ton of ice, costing \$11, would be necessary after arrival of the car at Globe, making the estimated total cost about \$57.25. This amount is exclusive of the cost of storing the ice in the bunkers, of hauling, and other necessary expenses incident to the service. The defendants further maintain that the \$35 refrigeration charge for the intrastate movement from Jacksonville to El Paso is noncompensatory, that it is less than the value of the ice supplied, and that it does not afford a fair standard by which to judge the reasonableness of the interstate charge assailed.

The carriers are entitled, in addition to the actual cost of the ice furnished, to compensation for the haulage of the ice, the cost of

supervision, repairs to bunkers and extra switching, and to an allowance for depreciation of cars, damage claims, and profit. *Railroad Commission of California v. A. G. S. R. R. Co.*, 32 I. C. C., 17; *Campbell v. St. L., B. & M. Ry. Co.*, 44 I. C. C., 567.

We find that the charges assailed for the movement from El Paso to Globe are not shown to have been unreasonable, and an order dismissing the complaint will be entered.

No. 9676.

DEWEY BROTHERS COMPANY

v.

SOUTHERN RAILWAY COMPANY ET AL.

Submitted February 23, 1918. Decided October 2, 1918.

Rate on distillers' dried grain in carloads from Louisville, Ky., to Alexandria, Va., not shown to have been unreasonable. Complaint dismissed.

J. W. Greenfield for complainant.

F. D. Claggett for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

The complaint herein, seasonably filed, assails as unreasonable the rate of 18.5 cents per 100 pounds charged by defendants on a carload of distillers' dried grain, shipped March 18, 1916, from Louisville, Ky., to Alexandria, Va. Reparation and a reasonable rate are asked. Rates are stated in cents per 100 pounds.

The shipment was delivered to the Southern Railway at Louisville. The route of movement is not shown. The only rate applicable in connection with the Southern as the initial carrier was 18.5 cents, the rate charged, applicable over the Southern to Danville, Ky., Cincinnati, New Orleans & Texas Pacific Railway, the only defendant other than the Southern, to Harriman Junction, Tenn., thence over the Southern through Asheville, N. C., to destination, 888 miles, and also over the Southern from Louisville to Lexington, Ky., Chesapeake & Ohio Railway to Orange, Va., thence over the Southern to destination, 658 miles. Rates of 15.4 cents applied over certain other routes

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with lines other than the Southern as initial carriers. The Southern participated in the 15.4-cent rates on traffic by way of its line to but not from points thereon. The complainant's witness was unable to state what rate, if any, was inserted in the bill of lading, nor could he assign a reason for the delivery of the shipment to the Southern at Louisville when lower rates were applicable by way of other routes. As the rate charged was the lowest rate applicable on the shipment with the Southern as an initial carrier, the shipment was not misrouted. *McLean Lumber Co. v. L. & N. R. R. Co.*, 22 I. C. C., 349.

Effective May 26, 1917, a rate of 15.4 cents was established through Asheville, and also over the route through Lexington in connection with the Chesapeake & Ohio, with the Southern as the initial, participating, or delivering carrier. The Southern's witness testified that this rate was published in an agency tariff; that it was established without authority; and that its existence was not called to the attention of the Southern's officials until just previous to the hearing in this case. This rate remained in effect until March 31, 1918, when it was increased to 18 cents, following *The Fifteen Per Cent Case*, 45 I. C. C., 303.

The complainant stated that when the shipment moved a rate of 18.4 cents applied on grain by-products from St. Louis, Mo., to Alexandria, by way of the Southern to Lexington, and the Chesapeake & Ohio beyond, and that a rate of 17.5 cents applied over this route from St. Louis to Alexandria on grain products manufactured from grain originating west of the Mississippi River, and a local rate of 21.5 cents on grain products from St. Louis to Alexandria. The complainant contends that since the Southern participated as initial carrier in the rates named it would have done so with respect to the 15.4-cent rate on distillers' dried grain from Louisville. It is observed that the rate on grain by-products in carloads from St. Louis to Louisville was 8 cents, and if a rate of 15.4 cents from Louisville to Alexandria were applied the total would be 23.4 cents, while grain shipped from St. Louis to Alexandria and milled in transit at Louisville would move at the rate of 21.5 cents above mentioned plus a transit charge of $\frac{1}{2}$ cent, a total of 22 cents. There is no evidence that the grain from which the distillers' dried grain was manufactured originated at St. Louis or that the Southern received a haul on the inbound shipments, which is necessary in order to secure the transit service. Furthermore, the rates cited by complainant from St. Louis to Alexandria do not apply over the defendants' lines.

For the defendants it was stated that the rates on grain and grain products from the Ohio River, East St. Louis, Ill., and the west generally to Alexandria and eastern territory are fixed on a low basis

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by the trunk line carriers, and that the southern lines, if they desire to compete, must maintain the same rates over their longer routes. Ordinarily the rates on grain by-products are lower than on grain products, but in this instance the rate on by-products was so low that the defendants elected not to meet the competition. The defendants cited rates on distillers' dried grain in carloads from Louisville to various points in the southeast which are substantially higher than the 18.5-cent rate for like distances. The rate assailed yielded 4.17 mills per ton-mile over the route through Asheville and 5.62 mills per ton-mile over the route through Lexington, and the 15.4-cent rate would yield 3.47 mills per ton-mile over the route through Asheville and 4.68 mills per ton-mile over the route through Lexington.

In *Greenbaum Co. v. L. & N. R. R. Co.*, 31 I. C. C., 699, we considered, among other things, the allegation that the rates on distillers' dried grain from Midway, Ky., to eastern seaboard and trunk line territories were unreasonable and also unduly prejudicial in favor of Louisville and Lexington. It there appeared that the Southern's rates on this traffic were 3 cents higher than those of the other lines operating from Louisville. While we found that it was unduly prejudicial for the defendants to maintain from Midway, on traffic moving through Lexington to the east, any rate higher than that contemporaneously in effect from Louisville over the same route, we did not order the Southern to reduce its rates to the level of those maintained by the other lines operating from Louisville.

Neither the fact that the rate assailed by way of the Southern as initial carrier was higher than applied over certain other routes nor the subsequent establishment of lower rates in connection with the Southern as initial carrier is sufficient to condemn the rate assailed.

We find that the rate assailed is not shown to have been unreasonable, and an order dismissing the complaint will be entered.

51 I. C. C.

No. 9283.

INTERNATIONAL PURCHASING COMPANY

v.

AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY
ET AL.

Submitted April 5, 1917. Decided October 2, 1918.

Sixth-class rating on paper makers' fibers, comprising waste paper, rags, jute waste, flax mill sweepings, old bagging (cut in pieces), rope mill sweepings, and junk (old rope and cordage) in carloads from and to certain points in official classification territory not shown to have been unreasonable. Complaint dismissed.

Southard, Gray & O'Connell for complainant.

W. A. Cole and *Parker McCollester* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant attacks the sixth-class rates on paper makers' fibers, comprising waste paper, rags, jute waste, flax mill sweepings, old bagging (cut in pieces), rope mill sweepings, and junk (old rope and cordage) from and to certain points in official classification territory as unreasonable and prays for reparation. The complaint assails the rates, but in substance the case as presented involves the rating.

Paper makers' fibers are low-grade waste materials used in the manufacture of various kinds of paper and are of much less value than the finished product. The official classification, which governs, rates these materials sixth class. While it rates most papers one class higher, or fifth class, that rating is not generally used. The carriers, by exceptions to the classification or by commodity tariffs apply sixth-class rates on most of the higher grades of paper and as low as 80 per cent of the sixth-class rates on other grades. The principal products on which the sixth-class rates apply are printing, wrapping, and blotting papers, and cardboard. Practically the only products which are accorded less than the sixth-class rates are building and roofing papers and several kinds of paper boards, on which 83½ per cent of sixth class applies within central freight association territory and 80 per cent of sixth class between eastern trunk line and central freight association territories. These percentage bases

received our sanction in *Official Classification Rates on Paper*, 38 I. C. C., 120. The complainant suggests that the carriers by the official classification ratings previously mentioned have already recognized the propriety of applying lower rates on the raw materials than on the manufactured products and contends that the defendants should be required to continue the relationship and reduce their present rates on the materials at least to 83½ per cent of sixth class.

There is practically no liability to loss or damage in connection with the transportation of paper makers' fibers, and they do not require or receive special or expedited movement. They contain moisture, dirt, and other foreign matter on which freight must be paid but which can not be used. To make 50 pounds of paper 100 pounds of fiber are needed; in other words, there is a waste or a shrinkage of 50 per cent.

Paper makers' fibers are such low-grade commodities that the freight charges thereon constitute a large item in their selling price, and most of the complainant's traffic, probably for this reason, is shipped only short distances. On these movements commodity rates less than the sixth-class rates are provided in many cases. Generally speaking, only old rope and cordage are shipped long distances at the sixth-class rates, perhaps because this commodity, unlike most other kinds of paper makers' fibers, is not to be had in sufficient quantities except at particular points. The complainant has no difficulty in disposing of the waste it collects, but hopes by a reduction in rates to be able to compete in distant markets in the sale of paper makers' fibers other than old rope and cordage.

The values of various kinds of paper makers' fibers as shown by complainant follow:

Mixed rags, \$15 to \$27 per ton; hard-back carpets, bagging (mixed or No. 2), \$15 to \$20 per ton; No. 1 bagging, \$20 to \$30 per ton; flax mill sweepings, \$10 to \$20 per ton; newspapers and mixed papers, \$5 to \$15 per ton; jute waste, \$10 to \$20 per ton; rope mill sweepings, \$10 to \$20 per ton; old rope and cordage, \$10 to \$40 per ton.

The following are given as the values of various kinds of papers:

Printing paper, \$72 to \$150 per ton; building and roofing papers, straw and paper boards and prepared roofing, \$21 to \$40 per ton; blotting paper, \$50 to \$120 per ton; wrapping paper, \$24 to \$145 per ton; tag board, \$70 to \$170 per ton; cardboard, \$70 to \$75 per ton; blank register, \$75; blank wall paper, \$40.

It thus appears that the value of the manufactured product is generally several times that of the raw material.

The complainant relies largely upon its comparison of old rope and cordage, rated sixth class, minimum 30,000 pounds, with building and roofing paper. The weight of 411 cars of paper makers' fibers loaded by shippers averaged 33,695 pounds, and on 331 cars of

imported traffic of the same kind loaded by the carriers 27,436 pounds. Whether the difference is due to the careless loading by the carriers or to the form or density of the package is not clear. The average loading of 1,535 cars of building and roofing papers was 36,955 pounds. On the basis of the figures shown as the average loading by the shippers the per-car earnings on the raw material would generally equal or exceed those on building and roofing papers. The evidence is conflicting as to the extent to which old rope and cordage are used in the manufacture of building and roofing paper. Although complainant attacks the rating on various kinds of paper makers' fibers, its evidence relates almost entirely to the commodities just referred to. What has been said with respect to the comparison of old rope and cordage with building and roofing paper is not true as to comparisons between other paper makers' fibers and other papers.

The defendants oppose complainant's prayer mainly because of the light loading of the materials and the low per-car earnings. At the sixth-class rates the per-car earnings on paper makers' fibers are, because of the light loading, very much below the earnings on the various kinds of paper. Practically the only exception is the case of the per-car earnings on old rope and cordage exceeding those on building and roofing paper, but building and roofing paper move at lower per-car earnings than any other kind of paper above referred to. The minimum weights and the average weights of carloads of various kinds of paper and paper makers' fibers, as given by the defendants, are shown below:

	Minimum weights.	Actual loading.
	<i>Pounds.</i>	<i>Pounds.</i>
Papers:		
Book (printing).....	36,000	43,500
Boards (other than tag board).....	¹ 38,000	50,000
Building and roofing.....	30,000	36,955
Blotting.....	30,000	45,000
Wrapping.....	36,000	49,000
Paper makers' fibers:		
Junk (old rope and cordage).....	30,000	32,111
Rags.....	² 22,000	25,307
Waste paper.....	² 22,000	24,762
Jute waste.....	24,000	23,661
Flax mill sweepings.....	20,000	25,817
Old bagging.....	² 22,000	25,307

¹ The official classification minimum is 36,000. On traffic originating in central freight association territory exceptions make the minimum 40,000. The average of the two minima is 38,000.
² The official classification minimum is 24,000. On traffic originating in New England and eastern trunk line territories it is 20,000. The average of the two minima is 22,000.

As will be seen, the loadings of paper exceed the minima by very much larger amounts than do the paper makers' fibers, and as a rule both the minima and the actual loadings of papers greatly exceed those of paper makers' fibers. Generally paper makers' fibers

do not load as heavily as any kind of paper. In no case does the average loading of paper makers' fibers even reach the minimum weight on any kind of paper except in case of old rope and cordage, and there the average loading is considerably less than the lowest average loading of papers.

Various commodities, in addition to the fibers named, enter into the manufacture of paper. Soda products, bleaching powder, calcium chloride, talc, clay, wood pulp, strawboard, etc., are used. These are raw materials, but not waste, and are of greater value than the fibers under consideration. They generally move at rates considerably lower than sixth class, but the minima range from 36,000 to 50,000 pounds. Very few commodities with a minimum of 30,000 pounds are rated as low as sixth class.

All paper makers' fibers can be and frequently are loaded in excess of the minima. The complainant is willing that the minimum on old rope and cordage be increased to 36,000 pounds and on other kinds of fibers to 30,000 pounds as a complement to a reduction in the rating, but the defendants suggest that many shippers would vigorously oppose it. We are not convinced that these minima should be established.

Upon consideration of all the facts and circumstances we find that the rating assailed is not shown to have been unreasonable. The complaint will therefore be dismissed.

An appropriate order will be entered.

51 I. C. C.

No. 9684.¹

PROVIDENCE FRUIT & PRODUCE EXCHANGE ET AL.
v.
AMERICAN EXPRESS COMPANY ET AL.

Submitted December 14, 1917. Decided October 2, 1918.

Express rates on strawberries, in carloads, from Independence, La., Jackson, Miss., and Ripley, Tenn., to Providence, R. I., found to have been unreasonable. Reparation awarded.

George W. Collier for complainants.

E. E. Bush for American Express Company.

J. E. Cronin for Adams Express Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

By DIVISION 3:

The complainants are the Providence Fruit & Produce Exchange, a voluntary organization of dealers in fruit at Providence, R. I., and A. A. Fiske, W. H. Fiske, and D. S. Fiske, copartners, trading as H. B. Fiske & Company, and Anthony M. Tourtellot, members of that organization. By complaints filed May 5, 1917, as amended, they allege that the charges collected by defendants on 33 carloads of strawberries shipped from certain points in Louisiana, Mississippi, Tennessee, and Kentucky to Providence between May 3, 1915, and June 6, 1916, inclusive, were unreasonable. They ask for reparation and the establishment of reasonable rates.

The berries were packed in 24-quart crates and, with the exception of one carload from Currie, Tenn., moved by the American Express to Worcester, Mass., and the Adams Express thence to Providence. The excepted shipment apparently moved from Currie to Worcester by the Southern Express and the American Express and thence to Providence by the Adams Express. The following statement shows the points of origin, the blocks in which located, periods of movement, and the rates charged and claimed:

¹ This report also embraces No. 9712, Anthony M. Tourtellot v. Same.

To Providence from—	Block.	Time of movement.	Rate charged per 100 pounds. ¹	Rate claimed per crate.
				Cents.
Independence, La.....	1935	May, 1915.....	\$2.35	68
Do.....	1935	April and May, 1916.	2.04	68
Woodhaven, La.....	1935	May, 1916.....	2.04	68
Jackson, Miss.....	1735	May, 1915.....	2.35	68
Do.....	1735	April, 1916.....	2.04	68
Ripley, Tenn.....	1436	May, 1915.....	2.20	58
Do.....	1436	May, 1916.....	1.74	58
Currie, Tenn.....	1437	May, 1916.....	1.74	58
Gates, Tenn.....	1436	May, 1916.....	1.74	58
Bradford, Tenn.....	1337	May, 1916.....	1.74	58
Jackson, Tenn.....	1437	May, 1916.....	1.74	58
Paducah, Ky.....	1237	May and June, 1916.	1.44	48

¹ Based on an estimated weight of 38 pounds per crate of 24 full quarts, minimum 17,000 pounds.

The \$2.04 rates from Independence and Jackson and the \$1.74 rate from Ripley were established February 12, 1916. The shipments moved in refrigerator cars, and in addition to the express rates a refrigeration charge was assessed, which is not questioned. The rates claimed were defendants' rates on strawberries, in carloads, to Boston, Mass., in effect prior to May 5, 1915, applicable on crates containing 24 wine quarts of an estimated weight of 33½ pounds per crate, minimum 480 crates, equivalent to 16,000 pounds. On May 5, 1915, the defendants canceled these rates and established the following in amounts per 100 pounds: From Independence, Woodhaven, and Jackson, \$2.04; from Paducah, \$1.44; and from the other points of origin, \$1.74; based on a minimum weight of 16,000 pounds. It will be noted that these rates are three times those based on 24 wine quarts per crate estimated at 33½ pounds each. On August 26, 1915, the minimum in connection with the Boston rates was increased to 17,000 pounds, the minimum then and now applicable to Providence.

For the defendants it was stated that the basis for their original per-crate rates was a crate containing 24 wine quarts, weighing 33½ pounds, the kind generally in use, but that later, due to legislative action in various states, crates containing 24 full quarts came into general use, and that the average weight of these crates was 38 pounds. This estimated weight was first established in the official express classification May 20, 1913; was in effect when rates were first published to Providence, and is now in effect. The complainants contend that the average estimated weight of 38 pounds per crate is too high, but were unable to support that contention with evidence of any probative value. On behalf of the defendants it was testified that the estimated weight was based on experience with actual shipments. In *Fruits and Vegetables*, 43 I. C. C., 291, we recognized the
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necessity for estimated weights in connection with fruit and vegetable shipments. The 38-pound estimated weight of a crate containing 24 full quarts of strawberries applies in connection with freight shipments from the general territory here in question and is carried in tariffs approved in the case last cited. In our opinion the estimated weight of 38 pounds per 24 full-quart crate has not been shown to have been or to be improper.

The complainants also insist that more than 420 crates of strawberries can not be safely carried in certain refrigerator cars, and that the minimum of 17,000 pounds is therefore unreasonable. Based on a weight of 38 pounds per crate, 420 crates would weigh 15,960 pounds. A minimum of 16,000 pounds is suggested. There is no doubt that certain refrigerator cars will hold the prescribed minimum for many of the cars used were loaded in excess of that weight and apparently carried safely. Other cars did not contain the minimum and it appears that there may be some which possibly will not carry the minimum safely, but complainants' evidence in this respect was vague and indefinite and does not justify a condemnation of present minimum, especially when it appears that failure to load the minimum was sometimes due to the fact that a minimum load was not available at point of origin. A minimum of 17,000 pounds in connection with freight rates on strawberries from this origin territory was approved in *Fruits and Vegetables, supra*.

In *Providence Fruit & Produce Exchange v. American Express Co.*, Docket No. 6395, unreported, we found that the defendants' rate of 71 cents per crate charged on shipments of strawberries, in carloads, from Medina, Tenn., a point in block No. 1437, to Providence, in May, 1913, was unreasonable to the extent that it exceeded 58 cents per crate, minimum 480 24-quart crates, the rate contemporaneously applicable from Medina to Boston. The shipments in that case moved prior to the effective date of the provision for the estimated weight of 38 pounds per crate of 24 full quarts.

We find that the rates assailed are not shown to have been or to be unreasonable, except that the rates charged on the shipments from Independence, Jackson, and Ripley were unreasonable to the extent that they exceeded the rates in effect prior to July 15, 1918. We further find that the complainants other than the Providence Fruit & Produce Exchange made the shipments as described and paid and bore the charges thereon; that they were damaged to the extent of the difference between the charges paid and those that would have accrued at the rates herein found reasonable; and that they are entitled to reparation with interest. The exact amount of reparation due can not be determined upon the present record, and the complain-

ants named should prepare statements showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the date upon which the charges were paid, which statements should be submitted to the defendants for verification. Upon receipt of statements so prepared and verified we will consider the entry of an order awarding reparation.

No. 9930.

LUCAS E. MOORE STAVE COMPANY

v.

CENTRAL OF GEORGIA RAILWAY COMPANY.

Submitted February 23, 1918. Decided October 2, 1918.

Storage charges collected on 12,900 pounds of staves at Andalusia, Ala., found to have been unauthorized. Reparation awarded.

T. H. Shepard for complainant.

No appearance for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in the stave and heading business at New Orleans, La. By complaint filed October 20, 1917, it alleges that the storage charges collected by defendant on 12,900 pounds of staves at Andalusia, Ala., in 1916, were unlawful, unreasonable, and unjustly discriminatory.

On June 5, 1916, complainant placed 12,900 pounds of staves upon defendant's right of way at Andalusia. These staves had been drayed by complainant to that place, but up to that time they had not moved in transportation; they were placed by complainant in the open in an out of the way place, apparently without defendant's knowledge or consent, awaiting other staves sufficient to make a car-load. On or about September 25, 1916, complainant loaded these staves with others into a car and forwarded them to Savannah, Ga. At destination the defendant charged, in addition to the freight

charges, which are not in issue, \$118.68 for the storage of these staves at Andalusia. The material part of the rule under which these storage charges were assessed is as follows:

Freight, * * * received for delivery or held to complete a shipment or for forwarding directions, if stored in or on railroad premises, is subject to these storage rules.

The defendant admits the impropriety of these charges in its amended answer, and concedes that it has been its practice under the tariffs to assess charges on freight held in or on facilities that have been provided for receiving, storing, or delivering freight, but that it has been its custom not to assess storage charges on freight which it has permitted to be accumulated on its right of way in out of the way places.

These staves were not freight in any sense during the time they rested upon the defendant's right of way. They were not at a place where the defendant was accustomed to receive or store freight. They had not been received for delivery by defendant nor were they held by it to complete a shipment or for forwarding directions and were not subject to the storage rules. They were not in transportation.

We find that the storage charges assailed were illegally assessed; that complainant paid and bore these charges; and that it has been damaged and is entitled to reparation in the sum of \$118.68, with interest.

An appropriate order will be entered.

51 I. C. C.

No. 9376.

VIRGINIA-CAROLINA CHEMICAL COMPANY

v.

MICHIGAN CENTRAL RAILROAD COMPANY ET AL.

Submitted July 24, 1917. Decided October 2, 1918.

Rate on cyanamid, in carloads, from Niagara Falls, Ontario, to Dothan, Ala., found to have been unreasonable. Reparation awarded.

H. W. B. Glover for complainant.

John M. Sternhagen for Michigan Central Railroad Company and Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in the manufacture of fertilizer at Dothan, Ala. By complaint, filed November 29, 1916, it alleges that the rate of \$8.45 per net ton charged by defendants on two carloads of cyanamid shipped from Niagara Falls, Ontario, to Dothan, December 15, 1915, and January 7, 1916, was unreasonable to the extent that it exceeded \$7.36, the aggregate of the rates to and from Pensacola, Fla. Reparation is asked. Rates are stated in amounts per net ton.

The shipments originated on the Michigan Central Railroad and were specifically routed by the shipper over that road and the Cleveland, Cincinnati, Chicago & St. Louis Railway, hereinafter called the Big Four, to Cincinnati, Ohio; Louisville & Nashville Railroad to Pensacola; and Central of Georgia Railway to Dothan. A rate of \$7.36 was inserted in the bills of lading. They moved as routed to Cincinnati, thence over the Louisville & Nashville to Montgomery, Ala., and Central of Georgia to destination. The shipments aggregated 137,240 pounds and charges were collected thereon in the sum of \$579.84, at a through rate of \$8.45.

No joint through rate was in effect, but defendants' tariffs provided specifically for the construction of through rates by combination of rates to and from the Ohio River as named in tariffs specifically referred to. A commodity rate of \$2.74 applied on cyanamid

from Niagara Falls to Cincinnati over defendants' lines, but the tariff carrying this rate was not referred to in the tariff prescribing the Ohio River combination as the through basis. That tariff did refer to a tariff naming a sixth-class rate of \$2.94 on cyanamid from Niagara Falls to Cincinnati over the route of movement, and also to tariffs providing a through commodity rate of \$5.71 on cyanamid over the route of movement from Cincinnati to Dothan. Therefore, the rate legally applicable to these shipments was \$8.65, so that they were undercharged 20 cents per ton. There were contemporaneously in effect on cyanamid, in carloads, joint rates of \$4.65 from Niagara Falls to Pensacola over the Michigan Central and Big Four to Cincinnati and the Louisville & Nashville beyond, and \$2.71 from Pensacola to Dothan, a total of \$7.36. The rate from Pensacola to Dothan was published by the Louisville & Nashville and concurred in by the Central of Georgia, and the routing in connection therewith was unrestricted. Montgomery is directly intermediate Cincinnati to Pensacola over the Louisville & Nashville, and the \$2.71 rate from Pensacola to Dothan was applicable over the Louisville & Nashville and Central of Georgia by way of Montgomery. It follows that in the absence of the specific rate the Pensacola combination would, under rule 5 (b) of our Tariff Circular No. 18-A, have been legally applicable over the route of movement. In *Through Rates from Buffalo-Pittsburgh Territory*, 36 I. C. C., 325, we denied the carriers' applications for authority to continue through rates for the transportation of freight traffic from Buffalo-Pittsburgh territory and points in central freight association territory to points south of the Ohio River and east of the Mississippi River, through the Ohio River crossings, which exceed the aggregates of the intermediate rates subject to the provisions of the act. On February 1, 1916, the effective date of that order, defendants' tariffs were amended to permit the application of the Pensacola combination on shipments of cyanamid from Niagara Falls to Dothan over the route of movement.

In its answer the Louisville & Nashville expressed willingness to pay reparation upon the basis of the Pensacola combination provided its connections would participate. The lines north of the Ohio River, the only defendants represented at the hearing, offered no testimony. It was argued on their behalf that this was not a proper case for reparation because of the long-continued maintenance of the basis under which the rate assailed was constructed and the fact that an award of reparation in this case would constitute a precedent for claims on numerous shipments which moved under similar circumstances.

We find that the rate legally applicable was unreasonable to the extent that it exceeded the aggregate of the intermediate rates con-

temporarily in effect over the route of movement; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent that the charges paid exceeded those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$74.80, with interest. The undercharge above referred to may be waived.

An order awarding reparation will be entered.

No. 9938.

NICHOLS & COX LUMBER COMPANY

v.

NEW YORK CENTRAL RAILROAD COMPANY.

Submitted February 6, 1918. Decided October 2, 1918.

Transportation and demurrage charges collected on a carload of gum lumber from Helena, Ark., to Medina, N. Y., found to have been illegal. Reparation awarded.

R. L. Tuttle for complainant.

D. P. Connell for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

By DIVISION 3:

Complainant is a corporation engaged in the lumber business at Grand Rapids, Mich. By complaint filed October 25, 1917, it alleges that the combination rate on Buffalo, N. Y., charged by defendant on a carload of gum lumber shipped May 3, 1917, from Helena, Ark., and ultimately forwarded to Medina, N. Y., and certain demurrage charges assessed at Buffalo, were illegal, unjustly discriminatory, and unduly prejudicial. Reparation is asked. Rates are stated in cents per 100 pounds.

The shipment, weighing 73,300 pounds, was originally consigned to Dupon, Ill., but was reconsigned to complainant at Buffalo at the through rate, in accordance with the provisions of the governing tariffs. It moved over the St. Louis, Iron Mountain & Southern Railway, now the Missouri Pacific Railroad, Chicago, Peoria & St.

51 I. C. C.

Louis Railway, and Lake Erie & Western Railroad to Sandusky, Ohio, and New York Central Railroad to Buffalo, where it arrived May 30, 1917. The latter carrier is the only party defendant. Complainant refused to accept it at Buffalo, as request had been made on May 14, 1917, and again on May 18, 1917, that upon its arrival at that point the car be reconsigned to Rochester, N. Y., at the through rate. Defendant refused to reassign the shipment to Rochester on that basis because of alleged existing embargoes, but offered to forward it to Rochester, treating it as a new shipment from Buffalo and applying the local rate. Complainant insisted on its reconsigning instructions, and the car remained at Buffalo. On June 18, 1917, complainant requested defendant to reassign the car to Medina, but defendant refused for the same reasons given with respect to the reconsignment to Rochester. On July 27, 1917, upon the payment of the charges that had accrued on the shipment up to that date, defendant forwarded the car to Medina under a new bill of lading tendered by complainant. Charges were collected in the sum of \$432.70, composed of \$178.85 at a joint rate of 24.4 cents from Helena to Buffalo, \$38.85 at the sixth-class rate of 5.3 cents from Buffalo to Medina, and \$215 demurrage charges which accrued at Buffalo. Complainant contends that the transportation charges collected were illegal to the extent that they exceeded those that would have accrued at a joint rate of 26 cents applicable at the time of movement on gum lumber in carloads from Helena to Medina, plus a reconsigning charge, and that the demurrage charges also were illegally assessed.

The defendant's reconsignment tariff, governing the shipment, provided for reconsignment at Buffalo at the through rate applicable from point of origin to final destination, with a reconsigning charge of \$2 per car, if the order for reconsignment was given after arrival of a shipment at destination and before being placed for delivery. The tariff also provided:

No freight can be diverted or reconsigned under the rules contained in this circular to a station or point of delivery against which an embargo has been placed, either during or subsequent to the removal of such embargo, if the freight was forwarded from point of origin during the life of the embargo.

The defendant contends that certain embargoes prohibited the reconsignment of the shipment from Buffalo to either Rochester or Medina, and that the tariff rule quoted accordingly limited reconsignment. The tariff rule places a limitation only on reconsignment "to a station or point of delivery" against which an embargo has been placed. It is agreed that no embargo existed against Buffalo, Rochester, or Medina as points of delivery. Irrespective of the alleged embargoes against the reconsignment of carload freight at or

from Buffalo, the limitations in defendant's reconsignment tariff were only as to points which were embargoed, and therefore the tariff rule did not prohibit reconsignment either to Rochester or Medina. The fact that charges were collected and a new bill of lading issued at Buffalo did not change its essential character as a through shipment reconsigned at Buffalo.

The defendant's demurrage tariff applied on "cars held for or by consignors or consignees for loading, unloading, forwarding directions, or for any other purpose." Concerning similar demurrage rules, we said in *Crescent Coal & Mining Co. v. B. & O. R. R. Co.*, 20 I. C. C., 559, at page 567:

Obviously, the words "or for any other purpose" apply only to cars held by consignors or consignees. They can not mean that demurrage can be assessed against a shipper or consignee unless cars are held by him for some purpose of his own. These words limit the charges to cases in which cars are held awaiting action by the consignee or shipper, such as loading or unloading, the giving of forwarding or delivery directions, the payment of freight, etc.

The shipment was not held at Buffalo for or by consignor or consignee.

We find that the transportation charges collected were illegal to the extent that they exceeded those that would have accrued at the through rate of 26 cents per 100 pounds, plus a reconsigning charge of \$2, and that the demurrage charges were illegally assessed. Complainant does not contend that the charges legally applicable were unjustly discriminatory or unduly prejudicial.

We further find that complainant made the shipment as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges collected and those herein found legally applicable; and that it is entitled to reparation in the sum of \$240.12, with interest.

An order awarding reparation will be entered against the defendant, but the other participating carriers should join in the payment of the reparation resulting from the overcharge in rate.

51 I. C. C.

No. 8993.

BOWMAN & COMPANY

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY
COMPANY ET AL.

Submitted November 8, 1916. Decided October 2, 1918.

Rates on eggs in carloads from interior Iowa points to Chicago, Ill., and to points east of the Indiana-Illinois state line found to have been unreasonable. Reparation awarded.

Ralph Merriam for complainant.

Wallace T. Hughes for Chicago, Rock Island & Pacific Railway Company and its receiver.

REPORT OF THE COMMISSION.

DIVISION 8, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in the butter and egg business at Chicago, Ill., and is successor in interest to Bowman & Bull Company. By complaint, filed June 12, 1916, it alleges that the rates charged by defendants for the transportation of eggs in carloads between April 1 and July 1, 1914, from Fort Dodge, Iowa, to Chicago, and from Audubon, Fort Dodge, and Harlan, Iowa, to the Mississippi River when destined to points east of the Indiana-Illinois state line, were unreasonable, unjustly discriminatory, and unduly prejudicial. Reparation is asked. The claims were presented to the Commission informally September 18, 1914.

The shipments moved as alleged over defendant's lines, 14 to Chicago, on which charges were collected at the applicable commodity rates, and 3 to eastern destinations, on which charges were collected at the applicable proportional commodity rates to the Mississippi River, plus the separately established rates beyond. The western classification, which governs, rates eggs, in carloads, third class. The commodity rates charged exceeded the respective third-class rates established April 1, 1914, following *Interior Iowa Cities Case*, 28 I. C. C., 64; 29 I. C. C., 536, and *Cedar Rapids Commercial Club v. C., R. I. & P. Ry. Co.*, 28 I. C. C., 76; 29 I. C. C., 539. Effective May 7 and 17, and July 1, 1914, the commodity rates were canceled.

Following *Swift & Co. v. B. & O. R. R. Co.*, 45 I. C. C., 8, pending at the time this complaint was filed, we find that the commodity rates assailed were unreasonable to the extent that they exceeded the respective third-class rates contemporaneously in effect and that the combination rates charged to destinations east of the Indiana-Illinois state line were unreasonable to the extent that the components up to the Mississippi River exceeded the proportional class rates prescribed in the *Interior Iowa Cities Case*, *supra*. There is no showing of unjust discrimination or undue prejudice. We further find that the Bowman & Bull Company made the shipments as described and paid and bore the charges thereon, and was damaged to the extent that the charges paid exceeded those that would have accrued on basis of the rates herein found reasonable; and that complainant, its successor, is entitled to reparation in the sum of \$130.58, with interest.

An appropriate order will be entered.

51 I. C. C.

No. 9300.

AMERICAN REFINING COMPANY

v.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY ET AL.

PORTIONS OF FOURTH SECTION APPLICATIONS

Nos. 461, 627, 796, AND 799.

Submitted March 16, 1917. Decided October 2, 1918.

Rate on fuel oil in carloads from Okmulgee, Okla., to Byrd, Tex., found to have been unreasonable to the extent that it exceeded the aggregate of the intermediate rates contemporaneously in effect to and from San Antonio, Tex. Reparation awarded.

C. R. Early for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant, a corporation formerly engaged in refining petroleum at Okmulgee, Okla., has been succeeded by the Empire Refineries, Inc., located at Tulsa, Okla. By complaint, filed October 10, 1916, as amended, it is alleged that the rate charged by defendants on a carload of fuel oil shipped October 19, 1914, from Okmulgee to Byrd, Tex., was unreasonable to the extent that it exceeded the aggregate of the intermediate rates contemporaneously in effect to and from San Antonio, Tex. Reparation is asked and the establishment of a reasonable rate for the future. Those portions of Fourth Section Applications No. 627 of F. A. Leland, agent; No. 796 of the St. Louis, San Francisco & Texas Railway Company; and No. 799 of the St. Louis & San Francisco Railroad Company, in which authority is sought to continue rates on fuel oil from Okmulgee to Byrd that are lower than the rates contemporaneously applicable from or to intermediate points, and of Fourth Section Application No. 461 of F. A. Leland, agent, by which authority is sought to maintain through rates on fuel oil from Okmulgee to Byrd in excess of the aggregate of intermediate rates, were set for hearing with the complaint. Rates are stated in cents per 100 pounds.

The shipment weighed 59,910 pounds and moved over the St. Louis & San Francisco and St. Louis, San Francisco & Texas railways to Sherman, Tex.; Houston & Texas Central Railroad and Galveston, Harrisburg & San Antonio Railway through San Antonio to Uvalde Junction, Tex.; San Antonio, Uvalde & Gulf Railroad to Byrd. Charges were collected in the sum of \$287.57, at a joint commodity rate of 48 cents. The intermediate rates contemporaneously in effect over the route of movement to and from San Antonio were 20 cents from Okmulgee to San Antonio, and 8 cents from San Antonio to Byrd, a total of 28 cents. This 8-cent rate was an interstate distance rate applicable on fuel oil. On February 28, 1916, the rate from San Antonio to Byrd was increased to 10.5 cents, but on May 6, 1916, it was reduced to 9 cents. Defendants were not represented at the hearing.

The record fails to disclose whether the rate to Byrd is lower than to intermediate points. In view of our decision in *Through Rates to Points in Louisiana and Texas*, 38 I. C. C., 153, in which relief from the rule of the fourth section, which prohibits the charging of a through rate in excess of the aggregate of intermediate rates was denied, no order with respect to defendants' applications for fourth section relief is necessary.

We find that the rate charged was unreasonable to the extent that it exceeded the aggregate of the intermediate rates contemporaneously in effect to and from San Antonio; that complainant made the shipment as described and paid and bore the charges thereon; that it was damaged to the extent of the difference between the charges collected and those that would have accrued on basis herein found reasonable; and that Empire Refineries, Inc., its successor, is entitled to reparation in the sum of \$119.82, with interest.

An appropriate order will be entered.

51 I. C. C.

No. 9362.

AMERICAN BRIDGE COMPANY

v.

NEW YORK, NEW HAVEN & HARTFORD RAILROAD
COMPANY ET AL.

Submitted April 24, 1917. Decided October 2, 1918.

Charges legally applicable on rubber glass in carloads from Ashland, Mass., to Miami, Ariz., found to have been unreasonable. Reparation awarded.

Charles S. Belsterling for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

By DIVISION 3:

Complainant is a corporation engaged in fabricating and erecting structural steel at Pittsburgh, Pa., and is the successor in interest of the American Bridge Company of New York. By complaint, filed November 29, 1916, it alleges that the first-class rating in the western classification and the resulting rates applied by defendants on two carload shipments of rubber glass and on a less-than-carload shipment of iron roofing strips from Ashland, Mass., to Miami, Ariz., October 27 and December 20, 1913, were unreasonable and unjustly discriminatory to the extent that they exceeded the third-class rating and rates. Reparation is asked. The claims were presented to the Commission informally February 27, 1915. At the hearing the allegation of unjust discrimination was abandoned. Rates are stated in cents per 100 pounds.

Rubber glass is a flexible, translucent composition pressed into sheets over a wire network and used as a substitute for glass in skylights or windows. The carload shipments weighed 44,120 pounds and 41,240 pounds, respectively, and the less-than-carload shipment of roofing strips, which was loaded with one of the carloads of rubber glass, weighed 455 pounds. They moved over the New York, New Haven & Hartford Railroad to New York, N. Y.; Southern Pacific Company, Atlantic Steamship lines, to Galveston, Tex.; Galveston, Harrisburg & San Antonio Railway to El Paso, Tex.; Southern Pacific Company to Bowie, Ariz.; and Arizona Eastern Railroad to destination. Charges aggregating \$2,645.06 were collected: On one shipment of rubber glass at a combination fourth-class rate of 51 I. C. C.

\$2.53; on the other at a combination first-class rate of \$3.68, governed by the western classification, composed of \$1.84 to Galveston, \$1.10 from Galveston to Bowie, and 74 cents from Bowie to Miami; and on the iron roofing strips at a joint fourth-class rate of \$2.46. The rates legally applicable were, on the rubber glass the first-class any-quantity combination rate of \$3.68, and on the strips the third-class combination rate of \$2.78, so that the shipment of October 27, 1913, was undercharged \$507.38 and the roofing strips \$1.46.

Prior to June 30, 1913, the western classification prescribed the fourth-class rating on "translucent fabric used as a substitute for glass," any quantity. This included the rubber glass of the type described. On the date mentioned the any-quantity rating was increased to first class. On September 15, 1914, after the shipments moved, the classification was further amended to provide a third-class rating, minimum 30,000 pounds, on this traffic in carloads and this rating is still in effect. When the shipments moved the third-class combination rate from Ashland to Miami was \$2.78. There has been no change in the rating on roofing strips.

Rubber glass is said to be analogous to and used for the same purposes as wired glass, which is rated fifth class, minimum 36,000 pounds, in the western classification; of about the same value, less hazardous to transport, and loads about the same. While there is some merit in this comparison, it appears that rubber glass is a comparatively new product and moves in less volume and under a lower carload minimum than wired glass.

We find that the charges legally applicable on the shipments of rubber glass, in carloads, were unreasonable to the extent that they exceeded the charges that would have accrued at the third-class rating and combination rate of \$2.78 per 100 pounds, which rating and rate we find would have been reasonable; that the American Bridge Company, of New York, made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued upon the basis herein found reasonable; and that complainant, its successor, is entitled to reparation in the sum of \$259.40, with interest. Collection of the undercharges may be waived.

An order awarding reparation will be entered.

51 I. C. C.

No. 9378.

FECHHEIMER STEEL & IRON COMPANY

v.

PENNSYLVANIA RAILROAD COMPANY ET AL.

Submitted March 28, 1917. Decided October 2, 1918.

Five carloads of scrap iron from Rahway, N. J., to Lebanon, Pa., not found to have been misrouted; and the rate charged over the route of movement not shown to have been unreasonable or unjustly discriminatory. Complaint dismissed.

Thomas F. Diefenderfer for complainant.

Frederic L. Ballard for Pennsylvania Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in buying and selling scrap iron and steel at Allentown, Pa. By complaint, filed December 1, 1916, it alleges that defendants' rate of \$2.52 per long ton on five carloads of scrap iron shipped from Rahway, N. J., to Lebanon, Pa., in December, 1915, and January, 1916, was unreasonable and unjustly discriminatory to the extent that it exceeded \$1.58. Reparation is asked. Rates are stated in amounts per long ton.

The shipments were delivered to the Pennsylvania Railroad routed "P. & R.," with no rate or junction point inserted in the bill of lading. It is admitted that the agent of the carrier made out the bills of lading, in the presence of the consignor or his agent, and that the routing was inserted at consignor's direction. The shipments moved over the Pennsylvania to Belmont, Pa., and the Philadelphia & Reading Railway, hereinafter called the Reading, beyond. Charges were collected at the legally applicable sixth-class rate of \$2.52, governed by the official classification. There was contemporaneously applicable on scrap iron from Rahway to Lebanon a commodity rate of \$1.58 by way of the Pennsylvania in connection with its affiliated line, the Cornwall & Lebanon Railroad, with a provision for the absorption of the Reading's switching charges at Lebanon.

For complainant it is contended that the shipments were misrouted, and also that the rate over the route of movement was unreasonable. It is further stated that the agent of the Pennsylvania advised that the \$1.58 rate was applicable over either route. Such misquotation of a rate affords no basis for an award of reparation.

We are of opinion that the notation in the bill of lading "P. & R." indicated clearly that a line haul over the Reading was desired, and this, therefore, placed the Pennsylvania under the obligation of turning the shipments over to the Reading at its junction with that line. *Prentiss & Co. v. P. R. R. Co.*, 19 I. C. C., 68.

No substantial evidence was adduced to show that the rate assailed was unreasonable or unjustly discriminatory.

We find that the shipments were not misrouted, and that the rate charged over the route of movement is not shown to have been unreasonable or unjustly discriminatory. An order dismissing the complaint will be entered.

51 I. C. C.

No. 9446.

SUNDERLAND BROTHERS COMPANY

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY.

Submitted May 28, 1917. Decided October 2, 1918.

Rate on crushed stone, in carloads, from Louisville, Nebr., to Haynies, Iowa, found to have been unreasonable. Reparation awarded.

H. S. Colvin for complainant.

F. Montmorancy for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation dealing in building material at Omaha, Nebr. By complaint, filed January 12, 1917, it alleges that the rate of 7 cents per 100 pounds charged by defendant on three carloads of crushed stone shipped May 20 and 22, and July 22, 1915, from Louisville, Nebr., to Haynies, Iowa, was unreasonable, unduly prejudicial, and in violation of the fourth section to the extent that it exceeded 2½ cents. Reparation is asked and the establishment of a reasonable rate for the future. Rates are stated in cents per 100 pounds.

The shipments moved over defendant's line through Pacific Junction, Iowa. They aggregated 293,200 pounds and charges were collected thereon in the sum of \$205.24 at the published through class E rate of 7 cents. At the time the shipments moved defendant maintained a commodity rate of 2½ cents on crushed stone, in carloads, from Louisville to Dunbar, Nebr., applicable over an interstate route through Haynies.

In support of its contentions complainant relies upon the fact that the tariff publishing this commodity rate provided, conformably to rule 77 of Tariff Circular 18-A, that, upon reasonable request therefor, rates would be established to intermediate points not exceeding those to more distant points. No request was made for the establishment of the 2½-cent rate prior to the time the shipments in issue moved. The provision mentioned is a substantial compliance with the requirements of the fourth section. *Kosse, Shoe & Schleyer Co. v. C., C., C. & St. L. Ry. Co.*, 41 I. C. C., 602. On August 29, 1915, the 51 I. C. C.

application of the $2\frac{1}{2}$ -cent rate from Louisville to Dunbar was restricted to movements wholly within the state of Nebraska, since which date the rate to Haynies has not exceeded the rate to more distant points.

At the time the shipments moved the intermediate rates contemporaneously in effect over the route of movement were $2\frac{1}{2}$ cents to Pacific Junction and $1\frac{1}{2}$ cents beyond, a total of $3\frac{1}{2}$ cents. This violation of the fourth section was not protected by an appropriate application. On May 25, 1916, a $3\frac{1}{2}$ -cent rate was established to Haynies. On the two shipments which moved in May, 1915, and which aggregated 189,800 pounds, defendant refunded \$61.68 based on the $3\frac{1}{2}$ -cent rate. It is stated that this was done in error and that defendant has since been endeavoring to collect the amount so refunded. No refund has been made on the July shipment which weighed 103,400 pounds, and upon which charges were collected in the sum of \$72.38.

The shipments in question were consigned by the National Stone Company, acting as an agent of complainant, to F. J. Wallace, at Haynies. The freight charges were prepaid by the consignor, but full credit therefor was given the consignor by complainant. While, therefore, the complainant is not a party to the transportation records, it is the real party in interest.

We find that the rate legally applicable was unreasonable to the extent that it exceeded $2\frac{1}{2}$ cents per 100 pounds; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$70.26, with interest. The defendants are authorized to waive collection of the undercharges.

An appropriate order will be entered.

51 I. C. C.

No. 9576.

AMERICAN SHEET & TIN PLATE COMPANY

v.

NEW YORK CENTRAL RAILROAD COMPANY ET AL.

Submitted April 27, 1918. Decided October 2, 1918.

Rates on dolomite, in carloads, from Natural Bridge and Benson Mines, N. Y., to Vandergrift, Pa., found to have been unreasonable. Reparation awarded.

U. S. Belsterling for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

The complainant, a corporation engaged in the manufacture of tin plate, sheet metal, and kindred commodities at Vandergrift, Pa., alleges by complaint, seasonably filed, that the rates charged by defendants on three carloads of dolomite, two shipped from Natural Bridge, N. Y., on May 5 and September 14, 1915, and one from Benson Mines, N. Y., on August 17, 1915, to Vandergrift, were unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that they exceeded \$2 per net ton. Reparation is asked. Rates are stated in cents per 100 pounds except as otherwise noted.

Dolomite is a crushed limestone which has been slightly burned to prepare it for use in blast furnaces. It is worth about \$8.50 per ton at point of origin. The shipments, aggregating 232,020 pounds, moved over the New York Central Railroad to Newberry Junction, Pa., and Pennsylvania Railroad beyond. Charges were collected on the shipments from Natural Bridge at the applicable sixth-class rates of 22.6 and 22.5 cents, respectively, governed by the official classification, made up of rates of 4.7 cents to Carthage and 17.9 and 17.8 cents beyond; and on the shipment from Benson Mines at the applicable sixth-class rate of 25.8 cents, composed of rates of 7.9 cents to Carthage and 17.9 cents beyond. On October 25, 1915, the defendants established a rate of \$2.52 per net ton, minimum 60,000 pounds, from Natural Bridge and Benson Mines to Vandergrift, and on December 5, 1915, reduced the rate to \$2 per net ton. On April 30, 1918, it was increased to \$2.30 per net ton following our supplemental order of March 12, 1918, in *The Fifteen Per Cent Case*, 45 I. C. C., 303.

Vandergrift is approximately 40 miles northeast of Pittsburgh, Pa. The distances over the routes of movement to Vandergrift are 500 miles from Natural Bridge and 533 miles from Benson Mines. During the period of movement the defendants had in effect a rate of \$2 per net ton on dolomite from Natural Bridge and Benson Mines to Pittsburgh and points taking the same rate, including Homestead, McKeesport, and Monessen, the latter being 89 miles south of Pittsburgh. Vandergrift ordinarily takes the Pittsburgh rate. Defendants were not represented at the hearing.

We find that the rates assailed were unreasonable to the extent that they exceeded \$2 per net ton; that complainant made the shipments as described, and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$318.91, with interest.

An order awarding reparation will be entered.

51 I. C. C.

No. 9584.

PEASE GRAIN & SEED COMPANY

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY
COMPANY ET AL.

Submitted March 5, 1918. Decided October 2, 1918.

Charges on two carloads of millet seed from Kanorado and Selden, Kans., to St. Louis, Mo., cleaned in transit at Beatrice, Nebr., found to have been unlawful and unreasonable. Reparation awarded.

William H. Young for complainant.

E. F. Strain for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant, Robert Pease, is engaged in the grain and seed business at Beatrice, Nebr., under the name of Pease Grain & Seed Company. By complaint seasonably filed he alleges that the rates charged by the defendants on two carloads of millet seed shipped in April, 1914, and February, 1915, from Kanorado and Selden, Kans., to St. Louis, Mo., and accorded a transit service at Beatrice, were unreasonable and asks for reparation and the establishment of reasonable rates. Rates are stated in cents per 100 pounds.

The inbound shipments, weighing 37,932 and 67,400 pounds, moved April 25, 1914, and February 20, 1915, from Kanorado and Selden, respectively, over defendants' line to Beatrice, where the seed was cleaned. The shipments moved from Beatrice over defendants' line through Horton, Kans., and St. Joseph, Mo., the first, forwarded February 23, 1915, consisting of 40,500 pounds of transit seed and 411 pounds of nontransit seed, and the second, forwarded February 24, 1915, consisting of 34,200 pounds of transit seed and 389 pounds of nontransit seed. Charges in the sum of \$209.16 were collected on the transit portion of the shipments at through rates of 26 cents, plus a charge of 2 cents per 100 pounds for out-of-line haul, the direct route from Selden and Kanorado to St. Louis being by way of defendants' line extending from Belleville, Kans., through Topeka, Kans., to Kansas City, Mo. It is complainant's contention that these charges were unreasonable to the extent of the out-of-line charge.

At the time of movement defendants' rate from Selden and Kanorado to St. Joseph was 17 cents, and under their tariff millet seed from those points of origin could be cleaned in transit at Beatrice and reshipped to St. Joseph as the final destination at that rate without additional charge, Beatrice being on the direct route to St. Joseph. There was also in effect a proportional rate of 9 cents from St. Joseph to St. Louis applicable on millet seed from Selden and Kanorado cleaned in transit at Beatrice, making a through rate of 26 cents. This fourth section departure was not protected by an application, and was therefore unlawful. Effective October 27, 1915, defendants amended their transit tariff so as to eliminate the out-of-line charge on shipments from Selden and Kanorado to St. Louis, accorded a transit service at Beatrice, and a willingness to make reparation was expressed.

We find that the charges collected on the transit portion of the shipments were unlawful and unreasonable to the extent that they exceeded those that would have accrued at the rate of 26 cents per 100 pounds; that complainant made the shipments as described and paid and bore the charges thereon; that he was damaged to the extent of the difference between the charges paid on the transit portion of the shipments and those that would have accrued on the basis herein found reasonable; and that he is entitled to reparation in the sum of \$14.94, with interest.

An order awarding reparation will be entered.

51 I. C. C.

No. 9615.

DAVIS SEWING MACHINE COMPANY

v.

PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS
RAILROAD COMPANY.

Submitted December 3, 1917. Decided October 2, 1918.

Demurrage charges collected at Dayton, Ohio, for the detention of interstate carload shipments found to have been legally applicable and not shown to have been unreasonable or unjustly discriminatory. Complaint dismissed.

Brown & Frank and *O. P. Gothlin* for complainant.

Matthews & Matthews for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

This complaint, filed March 20, 1917, as amended, alleges that \$7 demurrage charges collected by defendant at Dayton, Ohio, which accrued during the month of January, 1916, on cars containing coal and lumber shipped from points without the state of Ohio were illegal, unreasonable, and unjustly discriminatory, and prays for reparation.

Prior to the year 1913 the complainant and defendant had entered into the average agreement, substantially following the National Car Demurrage Rules provided by defendant's lawfully published demurrage rules and regulations. In addition to a provision for the taking of security for the prompt payment of monthly balances, this agreement provided for its termination by defendant "if payment is unnecessarily delayed or declined."

On March 26, 1913, Dayton was visited by a flood, which completely demoralized railroad transportation in that city. The defendant accordingly placed an embargo, beginning April 21, 1913, and continuing until May 20, 1913, upon shipments to that point, except food and other necessities. As a result some of complainant's shipments were held at various points outside of Dayton and, after the embargo was lifted, arrived so rapidly that they could not be unloaded within the free time. Bills for demurrage for the months of May and June, 1913, were rendered. These bills did not make any allowance for the bunching of the shipments, nor, admittedly contrary to our subsequent ruling in *Woolson Spice Co. v. P. Co.*,

39 I. C. C., 583, for trap cars as within the terms of the average agreement. It also appears that at that time no separation of interstate and intrastate shipments was made. Disputing the amount of the demurrage claimed, complainant refused to pay these bills; also bills for July, August, and September, apparently on the ground that the latter were accompanied by bills for back charges for May and June. December 1, 1913, the charges still remaining unpaid, defendant, after giving complainant notice, terminated the average agreement, and from that date until March 1, 1917, when the average agreement was renewed, straight demurrage was charged for the detention of cars at complainant's plant. In January, 1914, complainant paid the charges for July, August, and September, and that part of the charges for June, with respect to which there was no dispute. In November, 1915, the defendant brought an action in the local state court to recover the charges remaining unpaid, and also for straight demurrage in December, 1913, and January and February, 1914, which latter charges complainant had refused to pay on the ground that the average agreement had been illegally terminated. As far as disclosed, the action is still pending.

Complainant contends that the charges demanded for May and June, in so far as in dispute, were unlawfully assessed; and that as the payment of charges due had not been "unnecessarily delayed or declined," the cancellation of the average agreement was void, thus leaving the agreement still in force in January, 1916. It is admitted by defendant that had the average agreement continued in force there would have been no charges for that month. Complainant further contends that defendant could not lawfully deny the average agreement to anyone desiring it, and that defendant's remedy was and is to litigate disputed demurrage charges.

To sustain its contention that the charges resulting from the bunching of the inbound shipments were unlawfully assessed, complainant cites the case of *Joslin-Schmidt Co. v. Railway*, 25 Ohio C. C. (n. s.) 379, decided February 28, 1916, and apparently embodying the settled rule of decision in Ohio. That case involved demurrage charges, under the average agreement, on shipments detained at Cincinnati, Ohio, which had been bunched in transit as a result of the flood of 1913. The court, citing the provision, in connection with straight demurrage, exempting a shipper from charges for detention occasioned by bunching of cars "as the result of the act or neglect of any railroad," and the further provision that a shipper electing to take advantage of the average agreement should not have the benefit of the exemption, held that only a situation within the terms of the exemption could be affected by the shipper's waiver under the average agreement. Pointing out that the bunching had been the result, not

of the act or negligence of the carrier, but of an act of God, the court added:

It would be a harsh rule which would relieve one party on account of "an act of God" and at the same time permit it to penalize the other on account of delay and damage resulting from the same cause.

We are unable to adopt the conclusion reached in that case. Under defendant's essentially similar rules demurrage was and is assessable for detention beyond the free time, except that under the straight demurrage arrangement provision is made for an extension of the free time in case of bunching of shipments through the fault of the carrier, which concession is waived under an average agreement. The rules make no provision for additional free time for car detention on account of bunching resulting from an act of God. For any departure from those rules defendant would be guilty of a violation of the act. One of the purposes of the average agreement is, by credits for cars promptly released, to take care of detention caused by bunching and weather interference. *Alan Wood Iron & Steel Co. v. P. R. R. Co.*, 24 I. C. C., 27; *Michigan Mfrs. Asso. v. P. M. R. R. Co.*, 31 I. C. C., 329; *Castner, Curran & Bullitt v. P. Co.*, 42 I. C. C., 3. It would seem to us a strange principle that would permit a carrier to decline, under the average agreement, responsibility for the bunching of cars by its own act or neglect, and at the same time hold it accountable for bunching resulting from no fault of its own.

We conclude that the charges for the detention which resulted from the bunching of cars after the flood of 1913 lawfully accrued, and that, complainant having declined or failed to pay them, defendant was within its rights in terminating the average agreement.

We find that the charges assailed were legally assessed and are not shown to have been unreasonable or unjustly discriminatory. An order dismissing the complaint will be entered.

No. 9639.

BARBER & COMPANY, INCORPORATED,

v.

CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS
RAILWAY COMPANY ET AL.

Submitted July 17, 1917. Decided October 2, 1918.

Demurrage and track-storage charges at New York, N. Y., on a part carload of machinery from Springfield, Ohio, found legally applicable and not shown to have been unreasonable or otherwise in violation of the act. Complaint dismissed.

Charles S. Allen for complainant.

John M. Sternhagen for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in business as ship owners, agents, and brokers at New York, N. Y. By complaint filed April 25, 1917, it alleges that the demurrage and track-storage charges assessed by the New York Central Railroad Company, herein called defendant, for the detention and storage at New York of a case of machinery, shipped March 1, 1916, from Springfield, Ohio, were unreasonable. Reparation is asked.

The machinery, weighing 2,860 pounds, was part of a carload shipment consigned by the Selson Engineering Company, at Springfield, to Downing's Foreign Express, a forwarding company, at Sixtieth street station, New York. The car arrived at that station March 11, 1916, but on account of an existing embargo against delivery by lighter to points within the free lighterage limits of New York harbor, it was reconsigned by the consignee to defendant's Thirty-third street station, where it arrived March 23. Notice of arrival was mailed to consignee March 24, on which date and on March 30 portions of the shipment were delivered on orders from the consignee. On April 7 defendant's agent notified the consignee, by telephone, that two cases were still in the car and requested disposition thereof. On April 21 one was removed and the other, the one here in issue, was unloaded by defendant and placed in its freight station at Thirty-

third street. On April 22 and May 12 defendant's agent advised the consignee, by letter, that the shipment remained undelivered, and on May 16 the consignee advised defendant that a delivery order therefor had been given to C. H. Burdette, agent of the consignor, who had in turn indorsed it, on April 10, for delivery to complainant as agent for Herbert Davis, an export merchant of London, England. Davis had previously instructed complainant, as agent for the steamship line by which the property was to be exported, to receive the shipment for his account. It appears that on April 7 Burdette notified complainant of the arrival of the shipment. It was testified for complainant that its drayman had called for the shipment on April 14, but did not accept it when informed that storage charges amounting to \$109 had accrued. The drayman did not appear at the hearing. It was testified for defendant that its warehouse records did not show that anyone had presented an order for delivery on that day, but that complainant's drayman did call on May 10 and refused to accept the shipment on account of the outstanding charges. About May 17 defendant attempted to store the shipment in a public warehouse but the warehouse company was unwilling to assume the storage charges which had accrued. It remained in defendant's freight station until August 12, when the total demurrage and track-storage charges, amounting to \$349, were paid by complainant and the shipment was removed.

The charges for detention of the car up to April 21 were assessed at the following applicable rates: Demurrage, after 48 hours' free time, \$1 per day; and track-storage charges, after 48 hours' free time, \$1 per day for the first two days, and \$2 per day thereafter, Sundays and holidays excluded. After April 21, the date the shipment was unloaded and placed in the freight station, the same charges were assessed under the following tariff provision:

Carload freight (other than explosives) which is unloaded by this company for the purpose of releasing needed equipment will be subject to storage charge, the same as would have accrued under demurrage rules and track-storage charges, if any, had the freight remained in the car.

Complainant contends that defendant should have placed the shipment in a public warehouse for storage within 48 hours after arrival. It admits that it did not request this; that the early portion of the detention was for the convenience of the said Davis; and that the latter portion accrued while complainant was attempting to secure an adjustment of the charges. It was stated for defendant that it is not customary to place carload freight in public warehouses after the expiration of the free time. The absence of a rule requiring defendants to store shipments 48 hours after arrival has not been shown to result in an unreasonable practice by defendants.

Complainant further contends that it was unreasonable to assess the carload demurrage and track-storage charges on the shipment after April 21, as it was only a small part of a car lot. For defendant it was stated that if the shipment had been permitted to remain in the car it undoubtedly would have been subject to the demurrage and track-storage charges applicable to carload freight, and that in order to avoid complaints of undue preference in favor of consignees whose freight is unloaded by carriers and held in warehouses, to the prejudice of consignees whose freight is held in cars and thereby subjected to demurrage and car-storage charges, it is necessary that the same rules be applied in each case. In support of their position defendants cite *Levering Bros. v. P., B. & W. R. R. Co.*, 38 I. C. C., 349. Although in that case the shipments stored were carload lots, the rules under consideration were similar to those here invoked, and the Commission found that the charges were legally assessed and were not unreasonable. We further considered and approved the assessment of combined demurrage and track storage charges on carload freight at New York City in *N. Y. Hay Exchange Assn. v. P. R. R. Co.*, 14 I. C. C., 178.

It is well settled that demurrage and storage charges are not assessed primarily for revenue purposes, but in part, at least, as a penalty to promote release and fullest use of equipment, tracks, and terminal houses, and that the measure of such charges may not fairly be determined by the charges made by public warehouses.

In the instant case the shipment from Springfield was received and transported by the carrier as a carload lot, and the removal by the consignee, or on its orders, of the major part of the original carload did not change its character, nor did the carrier in permitting such removal thereby forfeit any of its rights or waive its lien upon the property in whole or in part. To what extent complainant's relations with the consignee justified payment by it of all of the charges accruing from March 24 without subsequent recourse upon the consignee is not for us to determine.

We are of the opinion and find that the charges assailed were legally assessed and that they are not shown to have been unreasonable or otherwise in violation of the act.

An order will be entered dismissing the complaint.

51 I. C. C.

No. 9678.

SYRACUSE CHAMBER OF COMMERCE ET AL.

v.

NEW YORK CENTRAL RAILROAD COMPANY ET AL.

Submitted December 5, 1917. Decided October 2, 1918.

Rates legally applicable on red oil, in carloads, from Syracuse, N. Y., to Lodi and Hawthorne, N. J., not shown to have been unreasonable. Complaint dismissed.

William J. O'Neil for complainants.

Parker McCollester for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

The complainants allege that the rates charged by defendants on 42 carloads of red oil shipped from Syracuse, N. Y., to Lodi and Hawthorne, N. J., between December 18, 1914, and March 24, 1916, inclusive, were unreasonable, and pray for reparation. The claim was presented to the Commission within the statutory period. Rates are stated in cents per 100 pounds.

The shipments moved as routed by the shipper over the West Shore Railroad to Little Ferry, N. J., and the New York, Susquehanna & Western Railroad beyond. The rates legally applicable were combination fifth-class rates, governed by the official classification: 14 cents to Little Ferry and 3.5 and 4 cents to Lodi and Hawthorne, respectively, prior to February 23, 1915, and 14.7 cents to Little Ferry and 3.7 and 4.2 cents to Lodi and Hawthorne, respectively, thereafter. Undercharges are outstanding on some of these shipments.

In support of its contention that the rates charged were unreasonable complainants rely mainly upon the fact that they exceeded joint commodity rates of 15 cents in effect prior to February 23, 1915, and 15.8 cents thereafter, over the lines of some of the defendants from Syracuse to Dundee and Garfield, N. J., points in the same general territory as Lodi and Hawthorne. These rates were restricted to traffic routed through Newburgh, N. Y., and did not apply on traffic moving through Little Ferry. Rates of 15 cents prior to February 23, 1915, and 15.8 cents thereafter, also applied

on red oil from Syracuse to Paterson and Passaic, N. J., over the lines of competing carriers not parties to this proceeding. Effective May 25, 1916, a joint commodity rate of 15.8 cents was established from Syracuse to Lodi and Hawthorne over the route of movement.

For defendants it was urged that it was not their practice to maintain joint rates from Syracuse to points in New Jersey over the route of movement, and that the joint rates to Dundee and Garfield by way of Newburgh, as well as the rate subsequently established over the route of movement, were established to meet the competition of the Delaware, Lackawanna & Western Railroad, which forms part of the short-line route from Syracuse to the New Jersey points.

The existence of a lower rate over competing lines, and the subsequent establishment of that rate over the route of movement, do not of themselves warrant condemnation of the rates charged.

We find that the rates legally applicable are not shown to have been unreasonable, and an order dismissing the complaint will be entered.

51 I. C. C.

No. 9738.

UNITED LUMBER COMPANY

v.

URSINA & NORTH FORK RAILWAY COMPANY ET AL.

Submitted December 18, 1917. Decided October 2, 1918.

Rates on lumber and forest products, in carloads, from Humbert, Pa., to various interstate destinations found to have been justified. Complaint dismissed.

George D. Howell for complainant.

George R. Scull, Uhl & Ealy, and Charles F. Uhl, jr., for Ursina & North Fork Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

This complaint brings in issue the rates charged on various carloads of lumber shipped from Humbert, Pa., to certain interstate destinations subsequent to April 26, 1915, which rates, it is alleged, were and are unreasonable to the extent that the rate of 45 cents per ton charged by the Ursina & North Fork Railway, hereinafter called the defendant, for the movement from Humbert to Ursina Junction, Pa., exceeded \$5 per car. Reparation and the establishment of reasonable rates are asked. Rates are stated in cents per net ton unless otherwise noted.

The shipments, consisting of lumber and forest products, moved over the line of the defendant from Humbert to Ursina Junction, a distance of less than 5 miles, and beyond over the Baltimore & Ohio Railroad and its connections to various interstate points or to points in Pennsylvania over interstate routes. Charges were collected for the haul to the junction point at the applicable commodity rate of 45 cents, minimum 34,000 pounds, and beyond at the joint or local rates of the connecting lines. From January 1, 1907, to October 10, 1909, the published charge for the haul to the junction, on file with the Commission, was \$5 per car. From the latter date to April 26, 1915, no charge was on file with us, but it is stated of record that the \$5 charge was assessed during this period. The rate on mine ties and mine timber was also changed on April 26, 1915; from \$5 per car to 20 cents per ton under which latter rate it is conceded by

complainants that the average earnings per car are less than \$5; and the rate on coal was increased from \$5 per car to 15 cents per long ton.

There was no relationship between the United Lumber Company and the defendant. The defendant railroad was originally owned by the Ursina Coal Company, which failed. Through foreclosure proceedings the Metropolitan Life Insurance Company, of New York, acquired the property of the coal company and the capital stock of the Ursina & North Fork which it held as collateral security under the mortgage. Since the failure of the coal company the defendant's principal traffic has been lumber and mine materials shipped by the lumber company. At the present time it also transports some lumber from other mills, and some coal. Its equipment consists of two locomotives, a coach, and a flat car. It carries freight, passengers, mail, and baggage. Of the 39,312 tons of revenue freight handled during the year ended June 30, 1916, 34,942 tons, or 88.8 per cent, were forest products and 1,407 tons, or 3.5 per cent, were mine products. Complainants estimate that their average loading of lumber is 50,000 pounds per car and of mine timber 45,000 pounds. The defendant estimates that the average loading of coal is from 100,000 to 110,000 pounds per car. Based upon the present rates and the average loadings above shown, the carload earnings to the junction average from about \$10.12 to \$11.25 on forest products and from about \$6.70 to \$7.37 on coal.

The 45-cent rate is compared with a rate of 89 cents on lumber from points on the Indian Creek Valley Railway, which line connects with the Baltimore & Ohio at Indian Creek, Pa. This rate applies from a number of points on the short line, but it is stated that the only mill on the line is located 5 miles from Indian Creek. It is also shown that the Morgantown & Kingwood Railway's rate on lumber and forest products for 5 miles is 65 cents. The Baltimore & Ohio publishes a distance scale rate of 74 cents for 1 mile and 79 cents for more than 1 and up to 5 miles over its Pittsburgh & Connellsville division.

Defendant's line bridges Laurel Creek four times, and the average of the grades is against the outbound haul. Operation is difficult and construction and maintenance expensive. The road has been operated at a profit since the rates were increased, but no dividends have ever been paid. The defendant shows that it did not operate at a profit under the former rate of \$5; and it is stated that the operating incomes for 1915 and 1916 would have shown a deficit if the rates had not been increased; that expenses of maintenance and operation have increased materially; and that the operating income for 1917 will show a deficit.

We find that the rates assailed have been justified, and an order dismissing the complaint will be entered.

No. 9742.
REED TOBACCO COMPANY
v.
CHESAPEAKE & OHIO RAILWAY COMPANY ET AL.

Submitted March 28, 1918. Decided October 2, 1918.

Rate on cigarettes, in less than carloads, from Richmond, Va., to Seattle, Wash., not shown to have been unreasonable. Complaint dismissed.

John H. Reed for complainants.

W. E. Prendergast and *Robert W. Fyfe* for Great Northern Railway Company and Chicago, Burlington & Quincy Railroad Company.

J. S. Patterson for Chesapeake & Ohio Railway Company and Chesapeake & Ohio Railway Company of Indiana.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainants are W. T. Reed, P. L. Reed, and J. H. Reed, co-partners, manufacturing cigarettes at Richmond, Va., under the name of the Reed Tobacco Company. They allege by complaint filed June 5, 1917, as amended, that the rate charged by defendants on a less-than-carload shipment of cigarettes forwarded August 31, 1916, from Richmond to Seattle, Wash., was unreasonable and ask for reparation. Rates are stated in amounts per 100 pounds.

The shipment, consisting of four boxes of cigarettes weighing 560 pounds, moved over defendants' lines. The western classification, which governed, rated cigarettes, in boxes "strapped with wood, iron or wire straps at the ends, and corded in the center; cord to pass in and out through each and every board of the four sides of the box, to be tightly drawn and secured with metal seals (other than lead)," first class, in less than carloads, and double first class when the boxes did not conform to these classification requirements. The first-class rate from Richmond to Seattle was \$3.70. Defendants contemporaneously maintained from and to these points a commodity rate of \$3 on cigarettes subject to the first-class rating in the classification. The shipment in controversy was packed so as to meet the classification requirements, except that lead seals were used.

Charges were prepaid at the \$3 rate, but were subsequently adjusted and collection made on basis of the double first-class rate of \$7.40 legally applicable.

Complainants' sole contention is that it was the duty of the initial carrier to direct attention to the fact that the shipment was not so packed as to be entitled to the first-class rating and rate. We are asked to determine what would have been a reasonable charge under the circumstances. Complainants concede that they were familiar with the requirements of the classification at the time the shipment moved, and attribute their use of lead seals to inadvertence. It was testified on behalf of defendants that lead seals afford no protection against pilferage because they can be split easily from the side, removed from the cords and, after the box has been opened, can be replaced without possibility of detection.

In this and other cases the records show large losses by pilfering in certain kinds of traffic, and these losses must necessarily find expression in the rates and in the conditions prescribed under which such commodities will be accepted for transportation.

The law imposes upon shippers the duty of ascertaining the rates and conditions under which they ship, and noncompliance by a shipper with tariff requirements affords no basis for a finding that the applicable rate was unreasonable. The shipper was fully advised by the tariff, with which it was familiar, of the packing conditions and, failing to comply with the same, it has little standing when its negligence has brought a burden upon it.

We find that the rate assailed is not shown to have been unreasonable. An order dismissing the complaint will be entered.

51 I. C. C.

No. 9805.

KENTUCKY LUMBER COMPANY, INCORPORATED,
v.
ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY ET AL.

Submitted November 15, 1917. Decided October 2, 1918.

Rate charged on a carload of lumber from Sulligent, Ala., to Cynthiana, Ky.,
found to have been unreasonable. Reparation awarded.

Ralph McCracken for complainant.

J. H. Fitch for defendants.

REPORT OF THE COMMISSION.

DIVISION 3; COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in the lumber business at Sulligent, Ala. By complaint filed July 20, 1917, it alleges that the rate of 24 cents per 100 pounds charged by defendants on a carload of lumber shipped March 2, 1916, from Sulligent to Cynthiana, Ky., was illegal and unreasonable. It asks for reparation. Rates are stated in cents per 100 pounds.

Cynthiana is between Paris and Covington, Ky., on the Kentucky division of the Louisville & Nashville.

The shipment weighed 45,600 pounds and moved over the St. Louis & San Francisco Railway, now the St. Louis-San Francisco Railway, to Birmingham, Ala., and the Louisville & Nashville through Louisville and Paris, Ky., to destination. Charges were collected in the sum of \$109.44, at a rate of 24 cents, the exact basis for which is not disclosed. Defendants contemporaneously maintained a joint commodity rate of 18.5 cents on lumber, in carloads, from Sulligent to Paris and Covington. The local rate from Paris to Cynthiana was 4 cents. The legal through rate was therefore 22.5 cents, and the shipment was overcharged 1.5 cents per 100 pounds.

The tariff naming the rate of 18.5 cents contained the following intermediate application rule:

Rates to intermediate points: To any point of destination not named in this tariff, but between any two points of destination named, the rate will be the same as to the next distant point that is named.

Cynthiana was not named in the tariff as a point of destination. Conformably to rule 77 of Tariff Circular 18-A, defendants provided that the Covington rate was not applicable to intermediate points, but would be published to such points on one day's notice upon request.

Defendants stated that Cynthiana is not intermediate to either Covington or Paris, the routes over which traffic to Covington and Paris moves; that traffic from or through Louisville to Covington moves over the Cincinnati branch of the Louisville & Nashville and to Paris over its Lexington branch; and that the intent and purpose of the intermediate rule was to apply the rates named only to points of destination that are intermediate on the route over which the traffic is ordinarily handled.

The rate applicable to Paris was not restricted to any particular route of the Louisville & Nashville beyond Louisville, and even though it is the practice of that carrier to handle traffic to Paris over its Lexington branch, which is the shortest route, there is nothing in the tariff which so restricts the movement. Under the tariffs shipments could move over the Cincinnati branch, thereby making Cynthiana intermediate to Paris, and subject to the rate to Paris, 18.5 cents. If it is the purpose of the Louisville & Nashville to restrict the application of the 18.5-cent rate to intermediate points on its Lexington division, the routing in connection with the rate to Paris should be so restricted.

We find that the rate legally applicable on the shipment in controversy was unreasonable to the extent that it exceeded 18.5 cents per 100 pounds, the rate in effect to the more distant point; that complainant made the shipment as described and paid and bore the charges therein; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$25.08, which includes the straight overcharge, with interest.

An appropriate order will be entered.

51 I. C. C.

No. 9862.
CHARLES F. CARR ET AL.
v.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY
COMPANY ET AL.

Submitted December 3, 1917. Decided October 2, 1918.

1. Charges legally applicable on a carload of emigrant movables, including live stock, from Waucoma, Iowa, to Midland, S. Dak., found to have been unreasonable. Reparation awarded.
2. Rules in the western classification under which the rates on emigrant movables, including live stock, are made dependent upon or varying with the value of ordinary live stock, declared in writing by the shipper, found to be unlawful.

Oliver E. Sweet, J. J. Murphy, P. W. Dougherty, and D. L. Kelley for complainants.

C. A. Lahy for Chicago, Milwaukee & St. Paul Railway Company.

A. F. Cleveland for Chicago & North Western Railway, Pierre & Fort Pierre Bridge Railway Company, and Pierre, Rapid City & North Western Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainants are Charles F. Carr, a farmer living near Ottumwa, Haakon County, S. Dak., and the Board of Railroad Commissioners of the state of South Dakota. By complaint filed September 10, 1917, it is alleged that the rate on a carload of emigrant movables, including live stock accompanied by a caretaker, shipped May 8, 1916, from Waucoma, Iowa, to Midland, S. Dak., was unreasonable and unduly prejudicial; and that the rule in the current western classification which provides the class A rating on the entire shipment of emigrant movables, including live stock, if the declared value of any of the animals exceeds certain standard values, is unreasonable and unduly prejudicial. Reparation and the establishment of through routes and reasonable joint rates on emigrant movables from points on defendants' lines in Iowa and Minnesota to points in South Dakota are asked. Rates are stated in cents per 100 pounds.

51 L. C. C.

The shipment, consisting of household goods and 4 horses, 5 cows and 1 hog in charge of a caretaker, moved over the Chicago, Milwaukee & St. Paul Railway, hereinafter called the Milwaukee, to Owatonna, Minn., and beyond over the Chicago & North Western Railway and affiliated lines, hereinafter termed the North Western lines. Charges were collected in the sum of \$158 at the class A combination rate of 76.5 cents, minimum 20,000 pounds, composed of 17.5 cents to Owatonna and 59 cents beyond.

At the time of movement the western classification, which governed, contained the following provisions:

Emigrants' Movables, * * * see note:

NOTE.—* * * will include * * * live stock * * *. The number of live stock to a car of emigrants' movables will be limited to 10. Agents will issue usual form of live-stock contracts; transportation of man in charge will be governed by current rules of the companies adopting this classification. * * *

	Class.
Actual value of each article not to exceed \$10.00 per 100 lbs., or the proportionate amount thereof if weight is less than 100 lbs., subject to rule 2, c. 1. min. wt. 20,000 lbs.	B
Actual value exceeding \$10.00 per 100 lbs. subject to rule 2, c. 1. min. wt. 20,000 lbs.	A

RULE 2.

Ratings on various articles are conditioned upon the actual valuations declared by the shippers at the time and place of shipment, and the following stipulation must be entered in full on shipping order and bill of lading and signed by the shipper:

I
We hereby declare the value of the property herein described to be-----

(Shipper's signature.)

Where shipper refuses to declare value at the time and place of shipment goods will not be accepted for transportation.

The bill of lading signed by the shipper indicated that the household goods and live stock were shipped at a released value of \$10 per 100 pounds; also that the value of the horses was \$125 each, of the cows, \$65 each, and of the hog, \$20. The shipment was accepted for transportation under this bill of lading and no declaration of value in the form prescribed by rule 2 was required by the initial carrier, nor was a live-stock contract issued. It does not appear, nor do defendants contend, that the actual value of the entire shipment was in excess of \$10 per 100 pounds. The defendants admit that the class A rate was not applicable, but state that charges should have been assessed on the household goods and horses at a combination rate of 41 cents, minimum 20,000 pounds, based on the class B rate of 15 cents to Owatonna and a commodity rate of 26 cents, applicable on emigrant movables rated class B in the classification beyond; but that as the values of the cows and hog exceeded the

standard values specified in the less-than-carload ratings on live stock the cows and hog were not entitled to the rate applicable on emigrant movables, and that charges should have been assessed thereon at the less-than-carload rates and weights applicable under the classification to cows and hogs of the values declared by the shipper. The live stock was included within the term emigrant movables as defined in the classification; and the item covering emigrant movables contained no provision for or reference to the application of higher ratings or different values on live stock than on other emigrant movables. The rate legally applicable was the combination rate of 41 cents, applicable on emigrant movables rated class B, on which basis the correct charges were \$82. The shipment was overcharged \$71.

For many years the Milwaukee has published joint rates on emigrant movables on the class B basis with a maximum rate of 30 cents from certain points in Illinois and Wisconsin north of a line from Moline, Ill., to Chicago, Ill., hereinafter called the Chicago group, to stations on the North Western lines in South Dakota east, and, with some exceptions, west of the Missouri River. Joint rates on a similar basis have also been maintained from certain grouped points in Minnesota and Iowa to points east of the Missouri River in some instances and to points west in other instances.

Effective September 1, 1916, a joint rate of 30 cents, minimum 20,000 pounds, was established on emigrant movables rated class B from Waucoma and a group embracing practically all of the initial lines stations in the state of Iowa, to Midland and stations on the North Western lines west of the Missouri River, applicable over the initial line to Council Bluffs, Iowa, or Omaha, Nebr., and the North Western lines beyond, but not over the route of movement. The distance from Waucoma to Midland by way of Council Bluffs is 830 miles and through Owatonna 551 miles. Defendants admit that the route of movement was a practicable route and that Owatonna was the most direct point of interchange. At the time of movement there was no lower rate over any other route and under the routing specified, "C. & N. W.," the selection of the junction was within the discretion of the agent of the initial line. The defendants admitted that under the circumstances the charges legally applicable were unreasonable to the extent that they exceeded those that would have accrued at the Chicago group rate of 30 cents and expressed willingness to make reparation upon that basis. The defendants also agreed at once to extend the application of the then existing joint rates from the Iowa group and the Minnesota group to points on the North Western lines in South Dakota east and west of the Missouri River as requested by the complainants, but asked that they be allowed to de-

fine the routing. In April and May, 1918, joint rates were established in substantial compliance with this agreement.

We find that the charges legally applicable were unreasonable to the extent that they exceeded those that would have accrued at a rate of 30 cents per 100 pounds, minimum 20,000 pounds; that complainant Charles F. Carr made the shipment as described and paid and bore the charges thereon; that he has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate and minimum herein found reasonable; and that he is entitled to reparation in the sum of \$93, with interest, which amount includes the overcharge above mentioned.

Effective October 15, 1916, the western classification rating applicable to emigrant movables was amended to read as follows:

Actual value of each and every article (except live stock, see note) not to exceed \$10 per 100 pounds, etc., * * *.

Actual value of each and every article (except live stock, see note) exceeding \$10 per 100 pounds, etc. * * * Note: If live stock is included with shipments of emigrants' movables, the same will be handled in accordance with the rules and regulations prescribed under heading of live stock as to valuations. If values so declared do not exceed standard values shown under heading of live stock, the entire shipment (emigrant movables and live stock) will be entitled to class B rating as above mentioned.

If declared value of any one or more head of live stock in shipment exceeds the standard values referred to, the entire shipment (emigrants' movables and live stock) will be charged class A rating as above mentioned.

The present record does not afford a basis for a finding as to the reasonableness of the rule stated in the last paragraph of this item. However, the effective date of the amended item was subsequent to the Cummins amendment of August 9, 1916, which prohibits the making of rates on ordinary live stock dependent upon actual, declared or released value, and the rules in the note quoted above, which make no distinction between ordinary live stock and fancy, blooded, or racing stock, or stock chiefly valuable for other special purposes, are unlawful. The present ratings on emigrant movables, except ordinary live stock, made dependent upon declared values, although not attacked in this proceeding, are and, since August 9, 1916, have been unlawful in that they were not expressly authorized by this Commission.

An order awarding reparation will be entered.

51 I. C. C.

- No. 9888.

KENTUCKY PEERLESS DISTILLING COMPANY
v.
LOUISVILLE, HENDERSON & ST. LOUIS RAILWAY
COMPANY ET AL.

Submitted February 25, 1918. Decided October 2, 1918.

Minimum weight on alcohol, in tank-car loads, from Henderson, Ky., to Mount Union and Emporium, Pa., not shown to have been unreasonable. Complaint dismissed.

O. M. Bullitt for complainant.

J. R. Skillman for Louisville, Henderson & St. Louis Railway Company.

D. P. Connell for Cleveland, Cincinnati, Chicago & St. Louis Railway Company and New York Central Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

The minimum weight of 50,000 pounds applied by defendants on 57 tank-car loads of alcohol shipped from Henderson, Ky., to Mount Union and Emporium, Pa., between August 30, 1916, and March 24, 1917, inclusive, is assailed herein as unreasonable, and reparation and the establishment of a reasonable minimum prayed. Rates are stated in cents per 100 pounds.

Prior to April 29, 1916, fourth-class rates applied on alcohol in tank-car loads, from and to the points named, subject to rule 5-A of the governing official classification, which provides that—

The minimum weight for property in tank cars will be the maximum gallonage capacity of the shell of the tank unless otherwise provided * * *.

On that date, at complainant's request, the defendants established commodity rates equal to the fifth-class rates on this traffic, minimum as per the official classification, but not less than 50,000 pounds. Tank cars are generally private equipment, and the defendants provide in their tariffs that they do not assume any obligation to furnish the same. To secure a contract for the manufacture and shipment of a large quantity of alcohol the complainant leased for a period of six months 20 tank cars, each of which had a gallonage capacity of about 44,000 pounds of alcohol. The defendants col-

lected charges on each shipment based on the minimum of 50,000 pounds, or about 6,000 pounds more than the actual weight, the tank being filled to its shell capacity in each instance. The complaint is against the payment of charges on the 6,000 pounds per car.

On the defendants' behalf it was shown that the commodity rates and minimum were established to place Henderson on a competitive basis with Peoria, Ill., Terre Haute, Ind., Louisville, Ky., and other points where alcohol is produced, from which fifth-class rates apply in connection with a minimum of 50,000 pounds. The charges on complainant's shipments would have been from about \$7 to \$14 per car higher on the basis of the actual weight and fourth-class rates formerly in effect. The defendants also show that before the closing of the aforesaid contract complainant's president was informed as to the rate and minimum, and also of the fact that the tank cars which he proposed to lease would not hold more than 44,000 or 46,000 pounds of alcohol. He made no effort to secure other cars, perhaps because of the demand for such equipment or because those used were secured at the low monthly rental of \$22.50 per car. Of the tank cars in the United States only 19.2 per cent have a gallonage capacity of less than 50,000 pounds of alcohol.

We find that the minimum weight assailed is not shown to have been unreasonable, and an order dismissing the complaint will be entered.

51 I. C. C.

No. 9552.

NORTHWESTERN TRADING COMPANY, INCORPORATED,
v.
ADAMS EXPRESS COMPANY.

Submitted July 10, 1917. Decided October 2, 1918.

Express charges on horses, in carloads, from Pittsburgh, Pa., to Jersey City, N. J., not shown to have been unreasonable. Complaint dismissed.

J. H. Fishback for complainant.

Edward V. Conwell for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

By DIVISION 3:

Complainant is a corporation engaged in the purchase and sale of live stock at New York, N. Y. By complaint filed March 1, 1917, it alleges that the charges collected by defendant for the transportation by express of a shipment of 352 horses, forwarded December 17, 1915, from Pittsburgh, Pa., to Jersey City, N. J., were unreasonable. It asks reparation.

About 4 p. m. December 17, 1915, complainant requested defendant's agent at Pittsburgh to furnish a sufficient number of commercial horse cars commonly used for transporting horses by express, for shipment as soon as possible of these horses from Pittsburgh to Jersey City, for export. From the complaint it appears that they were booked for shipment in a vessel scheduled to sail the following day. Defendant's agent advised that the equipment called for could not be immediately furnished, as it would have to be secured from other points. Ordinary stock cars, without stalls, were available and accepted and loaded by complainant. Seventeen of these cars were used, all of which, it is stated, were loaded to capacity. One contained 18 horses and the remainder 20, 21, or 22. The loading was completed by 9.15 p. m. December 17, 1915. Charges aggregating \$2,550 were collected at the first-class rate of \$1.50 per 100 pounds and an estimated weight of 10,000 pounds per car. It was testified that from 28 to 35 horses can be loaded into a car without stalls of the character ordered:

Official express classification No. 23, I. C. C. No. A-1450, which governed, provided as follows:

Par. 17. Horses, mules, cattle, jacks, colts, burros, or ponies, when not crated, must be accepted only by authority of the superintendent, which must be given only when the shipment is destined to a point at which facilities for handling such shipments are provided and after arrangements have been made for handling, transferring, and forwarding the shipment through to destination, if such arrangement can be made.

Par. 19. Live stock: In carloads, n. o. s. The charge must be made on an estimated weight of 10,000 pounds per car, minimum \$50 first class.

Par. 22. The carload rate will apply on each special car whether containing one or more animals, but not exceeding the maximum number wherever specified, and provided that the carload charge will not cover the transportation of any animals in excess of the capacity of the car used.

Par. 23. For each animal in the car in excess of the maximum number provided, charge in addition to the carload rate as follows:

* * * * *

Par. 24. Horses, other than race horses, in stalled cars, one-twentieth of the carload rate. Horses, in cars not stalled, one-twenty-eighth of the carload rate.

Par. 26. The maximum number of animals which will be carried in one car at the carload rate is as follows:

* * * * *

Horses, other than race horses, in stalled cars----- 20

Horses, in cars not stalled----- 28

It also provided that the classification rates would apply on horses only when the declared value did not exceed \$100 each, and that when the declared value exceeded that amount, an additional charge, based on a percentage of the excess valuation, would be made. The bill of lading covering this shipment is not of record, and in the absence of a showing as to what the value of these horses was declared to be, we are unable to determine the rate legally applicable. After this shipment moved defendant eliminated the provision for different rates on horses of the kind here in question dependent on their value, in accordance with the act as amended by the Cummins amendment of August 9, 1916.

Complainant does not attack the measure of the rate charged. It contends that defendant's tariff provided, in substance, for the transportation of a minimum carload of 28 horses at a charge of \$150 per car; that cars which would contain that minimum were ordered but not furnished; and therefore that it was unreasonable for defendant to charge more for the transportation of these horses in the cars furnished than would have accrued if they had moved in commercial horse cars. Had the latter cars been furnished no more than 18 would have been required for the 352 horses, and complainant asks for reparation in the amount of the charges paid on four cars. Although follow-lot rules are not ordinarily carried in express tariffs,

defendant's tariff was amended on July 1, 1916, to include the following provision:

When the express company is unable to furnish a car of sufficient capacity to load the maximum number of animals, as provided above, the animals in excess of the capacity of the car furnished by the express company will be carried in another car without charge in addition to the carload rate.

This is satisfactory to complainant, and its only interest in this case is with respect to reparation.

Defendant denies that 28 horses is a minimum carload but insists, on the contrary, that it is a maximum, and points to the provisions of paragraph 22 to show that the charge applies on any number of animals up to 28 loaded in a special car, it being stated that the term "special car" signifies merely a car used exclusively by one shipper. It was testified for defendant that it owned no cars of any kind; that it always endeavored to furnish commercial horse cars when desired, but did not hold itself out as undertaking to furnish such equipment immediately when ordered; and that the follow-lot rule was established as an emergency measure because the demand created by the European war made it difficult to secure commercial horse cars and defendant was losing business on account of its inability to furnish the same.

A carrier is entitled to a reasonable time in which to furnish special equipment desired by a shipper and unless it is given reasonable notice of the shipper's requirements it is not liable for damages resulting from failure to furnish such equipment. It is apparent that the shipper could not even have waited 24 hours for the equipment desired; there was need for the utmost haste. Defendant offered the best equipment it had immediately available, which was accepted and used by the shipper.

It is our opinion upon this record that the defendant was under no legal obligation to comply with complainant's order for commercial horse cars within the short time necessary to meet complainant's requirements, and that the charges legally applicable upon the basis of the cars accepted and used are not shown to have been unreasonable.

An order dismissing the complaint will be entered.

51 L. Q. Q.

No. 9918.

A. J. HIGGINS LUMBER & EXPORT COMPANY

v.

NEW ORLEANS GREAT NORTHERN RAILROAD
COMPANY ET AL.

Submitted August 14, 1918. Decided September 14, 1918.

In January, 1917, three carloads of lumber billed to Herrick, Ill., were forwarded from points in Louisiana. They were held at Ramsey, Ill., on the tracks of the Toledo, St. Louis & Western Railroad for reconsignment. Orders to reconsign them to Toronto, Canada, were furnished by complainant within the free time allowed for that purpose. That carrier refused to reconsign these shipments, alleging as a reason for its refusal that Toronto was under an embargo. Demurrage was collected for the time these shipments were held at Ramsey, although the demurrage tariff contained no provisions for such charges. Reparation awarded.

L. Palmer for complainant.

A. A. Reinhardt for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, MEYER, AND DANIELS.

Complainant is a corporation engaged in buying and selling lumber and has its principal place of business in New Orleans, La. By complaint filed October 18, 1917, it alleges that the demurrage charges which were collected on three carloads of lumber forwarded in the month of January, 1917, from certain points in Louisiana and held in transit at Ramsey, Ill., for reconsignment were unreasonable and illegal. Reparation is asked.

January 23, 1917, one carload of lumber was forwarded from Bush, La., and January 24, 1917, and January 26, 1917, two carloads from Folsom, La., all billed to complainant at Herrick, Ill. These cars were intended for reconsignment and, therefore, were not carried beyond Ramsey, Ill., the destination, Herrick, named in the bills of lading having been given for the sole purpose of requiring routing via the Toledo, St. Louis & Western Railroad Company. In accordance with that carrier's practice these cars were stopped at Ramsey for reconsignment orders, which were furnished within the free time allowed by the tariff for that purpose. Complainant in its reconsignment orders directed that the cars be forwarded to the Boake Manufacturing Company, Toronto, Canada; the notation on the new bills of lading showing that the material contained in them was for the

erection of a munition plant at Toronto. Because Toronto was at that time under a freight embargo, the Toledo, St. Louis & Western Railroad refused to reconsign the cars as ordered, and they were held on demurrage at Ramsey following the order of their arrival there, February 1, 5, and 6.

The carrier named asked complainant to give reconsignment orders to some point which was not embargoed. Complainant failed to do as requested, and the cars were finally forwarded from Ramsey to Toronto on bills of lading dated March 13, 1917. At destination the Boake Manufacturing Company paid the freight charges and a total of \$403 as demurrage for the detention of these cars at Ramsey. This latter sum was repaid by complainant and is the amount for which reparation is now claimed.

The reconsignment tariff of the Toledo, St. Louis & Western Railroad which was in effect at the time these cars moved made no restriction of points to which cars might be reconsigned by reason of embargoes; the demurrage tariff did not contain any such restriction, nor did it have any provision for the imposition of demurrage charges for the detention of cars reconsigned to embargoed points.

The Commission has held that demurrage does not accrue, under a general demurrage tariff, against a car which has been offered for reconsignment to an embargoed point upon the general principle that demurrage is assessable for detention for which the shipper is directly responsible and can avoid or abate, while an embargo is placed by reason of the carriers' disability. *Reconsignment Case*, 47 I. C. C., 590, 634. Under the tariffs in effect at the times mentioned there was no provision that the carrier would not reconsign to an embargoed point. The embargo was a disability of the defendants; the orders of reconsignment should have been executed at once by the Toledo, St. Louis & Western Railroad in accordance with its tariffs; and the collection of any demurrage for the detention of these cars at Ramsey, held there by the Toledo, St. Louis & Western, not by or for the complainant, was unreasonable and illegal because contrary to its tariff provisions.

The Commission should find that the collection of these demurrage charges was unreasonable and illegal in that the collection of such charges was not in accordance with the tariffs then in effect; that complainant paid and bore these charges and was damaged thereby, and that it is entitled to reparation in the sum of \$403, with interest.

CLARK, Commissioner:

The foregoing proposed report of the examiner was served upon the parties and no exceptions thereto were filed. Upon consideration of the record the report and conclusion of the examiner are adopted by the Commission and an order will be entered accordingly.

No. 9766.
SPRINGFIELD MILLING COMPANY
v.
CHICAGO & NORTH WESTERN RAILWAY COMPANY
ET AL.

Submitted August 1, 1918. Decided September 14, 1918.

Rates for the transportation of flour-mill products from Springfield, Minn., to points in Illinois, west of De Kalb, Ill., and to points in Iowa not shown to be unreasonable, nor their relationship to rates from New Ulm and other points in Minnesota to be improper.

William Furst for complainant.

Robert H. Widdicombe and *A. F. Cleveland* for Chicago & North Western Railway Company.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, MEYER, AND DANIELS.

By this complaint it is alleged that the rates on flour and flour-mill products of all kinds, including feed of all kinds, from Springfield, Minn., a local point on the Chicago & North Western Railway, hereinafter referred to as the North Western, to points in Illinois, Iowa, Wisconsin, Ohio, Missouri, and Indiana are unreasonable and unduly prejudicial to Springfield and unduly preferential of New Ulm, Waseca, Winona, Sanborn, Mankato, Janesville, "and other competitive points" on the North Western in Minnesota. All the points named are on the line of the North Western in Minnesota extending east from Verdi to Winona, and are within a maximum distance of 196 miles of each other.

At the hearing it developed that the allegations of the petition, which as stated embrace only outbound rates, express the real cause of complaint only with respect to flour-mill products destined to points on lines which connect with the North Western, and that as to such products destined to points on the North Western itself the complaint is really against the through rate from point of origin of the wheat to final destination of the product, on traffic which the North Western permits to be milled at the respective points.

The difference in rate complained of ranges from 0.5 cent to 1.5 cents per 100 pounds. At the hearing it was testified on behalf of the complainant that the principal discrimination alleged was in favor of New Ulm, which is 27.9 miles east of Springfield. The

difference in rate complained of in favor of New Ulm is half a cent per 100 pounds.

At the hearing it was also testified on behalf of the complainant that there was no complaint with respect to traffic to eastern destinations, which routes from Springfield east through Winona, over which route the distance from Springfield is greater than from New Ulm, and that the main complaint was against the rates on traffic to points in Illinois west of De Kalb, Ill., and to points in Iowa, as to which the distance from Springfield is less than from New Ulm, by reason of the traffic from Springfield being routed, the complainant contends, through Sanborn instead of through Winona. The North Western denies that traffic from Springfield to the Illinois and Iowa points referred to, except perhaps in cases of emergency, has since January 1, 1916, been routed through Sanborn, and points in support of its assertion to the instructions contained in its tariffs to route such traffic, as well as traffic to more eastern points, through Winona. It concedes that prior to the date mentioned the routing was generally through Sanborn.

The complainant presents no evidence in support of its petition other than a general reference to what the rate situation is and a reiteration of the allegations of the petition that the rate relationship of Springfield to the other points named is improper. Only in its brief does it even state the relative distances from and through the various points named to representative destinations. In testimony and brief it seems to lay considerable stress upon the alleged routing of traffic from Springfield through Sanborn, but even the establishment of the fact that Springfield traffic has since January 1, 1916, as well as before that date, been so routed, for somewhat shorter distances than from the other points named, would not in itself afford a sufficient basis for the granting of the prayer of the petition.

The North Western presents evidence in support of its contention that the present rates are reasonable and just, including exhibits of comparative rates and distances, and asserts that the conditions of transportation at Springfield and the other points named are substantially dissimilar, in that the other points are directly intermediate from Minneapolis to much of the destination territory in question over the routes of carriers other than the North Western, some of which routes are shorter from those points than the route of the North Western, a circumstance which operates, it contends, to depress the level of the rates from the other points.

There may or may not be a maladjustment in the rates on flour-mill products from and through Springfield to the points in question, but if there is, the fact can not be held to have been established upon the meager showing made by the complainant upon this record.

Nor, as already stated, does the petition adequately express the real cause of complaint. The record as a whole affords an unsatisfactory basis for any finding other than that the complaint should be dismissed, and it should be so ordered.

CLARK, *Commissioner*:

The foregoing proposed report was served on the parties. No exceptions thereto were filed, and upon consideration of the record we adopt the proposed report and conclusions of the examiner. An order will be entered dismissing the complaint.

No. 8524.

PHOENIX CHAIR COMPANY

v.

CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL

Submitted May 15, 1916. Decided October 2, 1918.

Charges on a shipment of chairs, s. u. and k. d., from Sheboygan, Wis., to Los Angeles, Cal., found to have been illegal. Reparation awarded.

David Harlowe for complainant.

O. P. Bartlett for Galveston, Harrisburg & San Antonio Railway Company and Southern Pacific Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in the manufacture of chairs at Sheboygan, Wis. By complaint filed December 13, 1915, it alleges that the charges collected on a shipment of chairs forwarded in May, 1914, from Sheboygan to Los Angeles, Cal., were unreasonable. Reparation is asked. Rates are stated in amounts per 100 pounds.

Complainant ordered a 50-foot car from the Chicago & North Western Railway Company. That carrier furnished two 40-foot cars for its own convenience. Complainant loaded these cars

with chairs of which 750 were set up, singly or in bundles, and 390 were knocked down. It was estimated for complainant that, based on the ascertained weight of one chair multiplied by the number of chairs forwarded, the shipment weighed 19,215 pounds. The scale weight at point of origin was 20,300 pounds, and at point of destination it is stated to have been 19,880 pounds. No explanation was made for defendants as to this discrepancy. Charges were collected in the sum of \$588, based on a minimum weight of 12,000 pounds on each car and a commodity rate of \$2.45. It is contended for complainant that a commodity rate of \$1.60, minimum 20,000 pounds, on the entire shipment, was applicable under rule 6 of the effective tariff which provided:

Carrier will furnish car of dimensions or weight-carrying capacity ordered by shipper if practicable, but if carrier for its convenience furnishes car of different dimensions or weight-carrying capacity the following rules will govern provided shipment could have been loaded into or upon car of the size or capacity ordered by shipper.

* * * * *

When car of smaller dimensions or less capacity is furnished actual weight will apply provided it is loaded to its full capacity. The balance of the shipment will be taken in another car at actual weight and carload rate and the entire shipment will be subject to the minimum weight applicable to car of the dimensions or capacity ordered.

It is insisted for complainant that if a 50-foot car had been furnished, the shipment would have been compressed into the space of such a car by knocking down 204 of the chairs that were shipped set up, or by loading chairs knocked down in the place of some of those set up. A chair set up occupied the space of six chairs knocked down. It is admitted for complainant that the shipment as made could not have been compressed into a 50-foot car without knocking down some additional pieces. It was stated for complainant, however, that it packed the chairs so as to fill both cars in order to prevent the second car from being loosely packed, which might have resulted in the shifting of the load and in consequence damage to the shipment. The practice of the complainant was to make the load fit the car. Several instances are cited for complainant of prior shipments by it in a 50-foot car in which more chairs were loaded than in the two 40-foot cars in question.

Defendants' witness stated that the two cars used for the shipment contained 5,440 cubic feet and that the largest 50-foot car of which they had knowledge contained only 4,630 cubic feet, and that from this it would seem obvious that any load which completely fills two 40-foot cars could not possibly be loaded into a 50-foot car. This contention, however, ignores complainant's statement that the two cars were filled to capacity in order to prevent the load from shifting and that if a 50-foot car had been furnished an additional number of chairs would have been knocked down.

Upon all the facts of record we find that the shipment could have been loaded into a 50-foot car; that the charges collected were illegal to the extent that they exceeded the charges that would have accrued at a rate of \$1.60 per 100 pounds, minimum 20,000 pounds; that complainant made the shipment as described and paid and bore the charges thereon herein found illegal; and that it has been damaged and is entitled to reparation in the sum of \$268, with interest.

An appropriate order will be entered.

HALL, *Commissioner*, dissenting:

Complainant ordered a 50-foot car for loading with chairs. The minimum weight applicable thereto was 20,000 pounds. The shipment consisted of 1,140 chairs, of which 750 were set up and 390 knocked down, and as shipped could not have been loaded in the car ordered. If that car had been furnished, complainant would have had to pay on the minimum weight applicable and would therefore have shipped in compact form more of the chairs than it did. The carrier furnished two 40-foot cars of a greater aggregate cubical capacity than the car ordered, and complainant loaded them to capacity with chairs in a less compact state. It thus used more space than was needed or would have been used in the car ordered, and deprived the carrier of the use of that excess space for other loading. The shipment as made could not "have been loaded into or upon car of the size or capacity ordered by shipper," and the proviso in rule 6 invoked by complainant was not complied with. That rule therefore did not apply any more than it would if a shipper availed himself of the two-for-one rule to load both cars with uncompressed hay or cotton, when the larger single car ordered would not have contained the shipment unless compressed and baled. The proviso was a safeguard designed to prevent abuses of the rule. Moreover waste of car space should not be sanctioned, especially when equipment and transportation facilities must meet the demands created by a world war. I am therefore unable to concur in the conclusions expressed in the majority report. The complaint should be dismissed.

51 I. C. C.

No. 9419.

BONNERS FERRY LUMBER COMPANY ET AL.
v.
GREAT NORTHERN RAILWAY COMPANY ET AL.

Submitted October 12, 1917. Decided September 30, 1918.

Rates on lumber, in carloads, from Bonners Ferry and Coeur d'Alene, Idaho, to certain destinations in Montana and North Dakota justified. Complaint dismissed.

R. J. Knott and S. V. Carey for complainants.

John F. Finerty, Chas. S. Albert, and Thos. Balmer for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The rates charged by defendants on numerous carloads of fir and pine lumber shipped from Bonners Ferry and Coeur d'Alene, Idaho, to various points in Montana and North Dakota, between January 24 and December 15, 1914, are assailed herein as unreasonable and unduly prejudicial, and reparation and the establishment of reasonable rates asked. Claims covering some of the shipments are barred. Rates are stated in cents per 100 pounds.

Bonners Ferry is on the Great Northern Railway, 108 miles east of Spokane, Wash., and Coeur d'Alene is on the Spokane & Inland Empire Railroad, about 32 miles east of Spokane, through which point the shipments from Coeur d'Alene moved. The points of destination are located on the so-called Scobey and Watford branches of the Great Northern near the Montana-North Dakota line. The rates applicable during the period of movement were 35 cents from Bonners Ferry and 36 cents from Coeur d'Alene to the points on the Scobey branch, 34 cents from both points to Lambert, Mont., and Alexander, N. Dak., and 35 cents to Arnegard and Watford, N. Dak., on the Watford branch. The rates from Coeur d'Alene were the same as applied from Spokane, Wash., and grouped points. The rates from Bonners Ferry and Coeur d'Alene to Medicine Lake and Plentywood, Mont., on the Scobey branch, were increased on October 1, 1913, from 33 to 36 cents. The rate from Bonners Ferry was subsequently reduced to 35 cents.

The complainants contend that a reasonable rate when the shipments moved would have been 33 cents, upon which basis they claim

reparation, and that a reasonable rate for the future would be 28 cents. The undue prejudice alleged grows out of the fact that there was contemporaneously in effect a rate of 33 cents on mixed shipments of lumber and doors from and to the same points, which rate could be availed of on a carload shipment of lumber by including two doors therein. It was shown that this rate was published through error, and the alleged prejudice has since been removed by the publication of the same or higher rates on mixed shipments. There were also in effect during the period of movement from the Spokane group, as well as from Bonners Ferry and Coeur d'Alene, rates of 33 cents on lumber, or lumber and doors, to Bainville and Snowden, Mont., the junction points between the branches in question and the Great Northern's main line, except that from Bonners Ferry to Bainville the rate on lumber was 32 cents. With one or two exceptions the rates from the points of origin to Great Northern branch-line points north of its main line in North Dakota are the same as apply to the main-line junctions, while from the coast group of lumber-producing points, including Seattle, Wash., the rates to the Scobey and Watford branches are blanketed at the main-line junction rate of 40 cents. The defendants contend that their failure to extend the main-line junction rates from the Spokane group and from Bonners Ferry and Coeur d'Alene to the Scobey and Watford branches while such rates are extended to the branches farther east is justified by reason of the greater distance to the latter; and by competition with the Minneapolis, St. Paul & Sault Ste. Marie Railway, whose main line, running from Bowbells, in the northwestern part of North Dakota, to Thief River Falls, Minn., crosses all the Great Northern branches. The Minneapolis, St. Paul & Sault Ste. Marie's main-line rates from the Spokane and coast groups, the same as the main-line rates of the Great Northern, apply at the points at which it crosses the Great Northern branches. The greater distance is also advanced as an explanation of the blanketing of the rates from the coast group to the Scobey and Watford branches.

The defendants apply class E rates on lumber shipped locally in Washington and Montana in the absence of commodity rates and, generally speaking, observe class E rates as maxima on lumber, but commodity rates are published from most producing points on a considerably lower basis than class E. Comparatively recent reductions in class rates are claimed by complainants to warrant lower rates on lumber now than when the shipments moved. For the defendants it is asserted that the rates on lumber do not bear any fixed relation to the class E rates, the latter being governed by different competitive conditions. In *Western Pine Mfrs. Assn. v. C., I. & W. R. R. Co.*, 46 I. C. C., 650, we commented on the fact that lumber in carloads is not

classified in the western classification, and stated that there was no fixed relation in that territory between the rates on lumber and any of the class rates.

The earnings under the rate charged on the shipments to Scobey are compared below with the earnings under the rates claimed by complainants and the rate from Seattle:

To Scobey from—	Miles.	Rate.	Ton-mile earnings.	Car-mile earnings.
		<i>Cents.</i>	<i>Mills.</i>	<i>Cents.</i>
Bonnors Ferry.....	792	¹ 35	8.84	⁴ 24.29
		² 33	8.33	⁴ 22.90
		³ 28	7.07	⁴ 19.43
Coeur d'Alene.....	933	¹ 36	7.72	⁴ 19.06
		² 33	7.07	⁴ 17.47
		³ 28	6	⁴ 14.29
Seattle.....	1,239	40	6.46	⁴ 18.08

¹ Charged.

² Asked as basis for reparation.

³ Asked for future.

⁴ Based on 54,963 pounds, average weight of shipments.

⁵ Based on 49,400 pounds, average weight of shipments.

⁶ Based on 56,000 pounds.

In *Sand Point Lumber & Pole Co. v. G. N. Ry Co.*, 43 I. C. C., 59, we considered the rates on cedar posts and lumber, in carloads, from Sand Point, Idaho, 33 miles west of Bonnors Ferry, and other points in Idaho and Washington in the Spokane group, to these same branch lines, and found that rates of 36 cents to certain points on the Scobey branch, therein referred to as the Plentywood branch, and of 34 cents to certain points on the Watford branch, therein referred to as the Snowden branch, were not shown to be unreasonable. It was contended in that case, as in this, that the differential of 7 cents under the coast group accorded the Spokane group on shipments to main-line points in the vicinity of these branches, which was established in *Potlach Lumber Co. v. N. P. Ry. Co.*, 14 I. C. C., 41, should be applied on the branches. The transcript of the testimony in the *Sand Point Case* was introduced in evidence in this case. It was testified for the defendants in that case that the rate from Sand Point to Medicine Lake and Plentywood was increased from 33 to 36 cents subsequent to January 1, 1910, because the main-line rate had been extended to those points by mistake. The rates assailed in that case yielded 8.78 mills per ton-mile for the average distance of 820 miles to points on the Scobey branch, and 8.6 mills per ton-mile for the average distance of 790 miles to points on the Watford branch.

In *Bonnors Ferry Lumber Co. v. G. N. Ry. Co.*, 38 I. C. C., 268; 39 I. C. C., 568, we found that the rates on lumber from Bonnors Ferry to Montana points on the Great Northern east of Dunkirk and south of Naismith, Mont., were just and reasonable, but unjustly discriminatory and unduly prejudicial as compared with the rates from certain points in western Montana. It was shown in that

case that the rates from Bonners Ferry to 32 representative Montana points averaged 23.5 cents, yielding average earning of 9.27 mills per ton-mile for an average distance of 514 miles. Our findings in that case necessitated a readjustment of rates and a regrouping of producing points, and the defendants published the following rates, effective May 10, 1917: From Bonners Ferry to Medicine Lake and Plentywood, 33 cents; to Flaxville, Mont., and Scobey, 35 cents; to Lambert and Alexander, 31 cents; to Arnegard and Watford, 32 cents; and to Bainville and Snowden, 30 cents; from Coeur d'Alene to the points on the Scobey branch, 36 cents; to Lambert and Alexander, 34 cents; to Arnegard and Watford, 35 cents, and to Bainville and Snowden, 33 cents.

We find that the defendants have justified the rates increased since January 1, 1910, and that the other rates assailed are not shown to have been unreasonable. Any undue prejudice which may have existed has now been removed, and there is no proof of damage to complainants by reason of the alleged discrimination.

An order dismissing the complaint will be entered.

51 I. C. C.

No. 9693.
FRIEDMAN MANUFACTURING COMPANY
v.
WESTERN PACIFIC RAILROAD COMPANY ET AL.

Submitted February 18, 1918. Decided September 30, 1918.

Rate on mustard seed oil, in carloads, from San Francisco, Cal., to Chicago, Ill., found to have been unreasonable. Reparation awarded.

H. K. Crafts for complainant.

L. T. Wilcox for dedendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant, a corporation engaged in the manufacture of oleomargarine at Chicago, Ill., alleges by complaint, seasonably filed, that the rate charged by defendants on a carload of mustard seed oil, in barrels, shipped December 3, 1914, from San Francisco, Cal., to Chicago, was unreasonable to the extent that it exceeded \$1.25, the rate subsequently established. It prays for an award of reparation. Rates are stated in amounts per 100 pounds.

The shipment, which weighed 30,147 pounds, moved over the Western Pacific and the Denver & Rio Grande railroads and the Missouri Pacific and the Chicago, Milwaukee & St. Paul railways, 2,656 miles. Charges were collected in the sum of \$889.34, at the second-class any-quantity rate of \$2.95 applicable under the governing western classification to oils "not otherwise indexed by name, other than medicinal oils." This oil was not otherwise indexed, and the rate charged was legally applicable. Prior to the movement the complainant requested a lower rate. On February 20, 1915, mustard seed oil was rated fourth class. The fourth-class rate from San Francisco to Chicago at that time was \$2.07. On April 9, 1917, a commodity rate of \$1.25, minimum 30,000 pounds, was established and has not been increased, except by an increase in the minimum to 40,000 pounds and by General Order No. 28 of the Director General of Railroads.

This oil was purchased to be used in the manufacture of oleomargarine, but the experiment did not prove satisfactory and its use has been discontinued. Five cars moved rail and water, but this is the only car the complainant shipped all rail.

The complainant compares the rate charged with rates applicable on various other oils, stated at that time to be of greater value than mustard seed oil. The oils named, with the exception of olive oil, rated third class, were and are rated fourth or fifth class, but specific commodity rates were published ranging from 50 cents to \$1.25. Based upon the respective minima applicable on the date of hearing, the ton-mile and car-mile earnings under the rates cited, with a few exceptions, are considerably less than under the rate of \$1.25 subsequently established on mustard seed oil. Over the route of movement the rate charged yielded 22.2 mills per ton-mile and 33.5 cents per car-mile, while the ton-mile and car-mile earnings at the \$1.25 rate would be 9.41 mills and 14.2 cents, respectively. The short route is over the lines of the Southern Pacific Company, Union Pacific Railroad, and Chicago & North Western Railway, 2,260 miles. By way of that route the earnings at a rate of \$1.25 would be 11.06 mills and 16.67 cents, respectively.

It was testified for the defendants that a commodity rate was not established when first requested, it appearing from an investigation that there was only one manufacturer of this oil in San Francisco and the tonnage that could be expected to move did not justify a rate less than fourth class; but that in the year 1916 a further investigation disclosed that a considerable quantity of the seed at San Francisco had been condemned for commercial purposes and could be used only in the manufacture of oil, and the commodity rate was established to make possible the shipment of that oil, as it was thought a substantial movement could then be expected.

We find that the rate charged was unreasonable to the extent that it exceeded \$1.25 per 100 pounds; that complainant made the shipment as described and paid and bore charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$512.50, with interest. An order will be entered accordingly.

51 I. C. C.

No. 9654.
CALLAWAY FUEL COMPANY
v.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY
COMPANY ET AL.

Submitted July 18, 1917. Decided October 2, 1918.

Upon complaint of the exaction of illegal and unreasonable charges due to failure of defendants to hold at Ludington, Mich., a carload of coal from Lilly, Pa., consigned to Elm Grove, Wis., and subsequently reconsigned to North Milwaukee, Wis.; *Held*, That defendants acted within their rights and that the charges were legally assessed and are not shown to have been unreasonable.

Edward Callaway and *H. W. Bistorius* for complainant.
F. W. Goldie for Pere Marquette Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in the fuel business at Milwaukee, Wis. By complaint, filed April 9, 1917, it alleges that, due to the failure of defendant Pere Marquette Railway to comply with complainant's request, the charges assessed on a carload of coal shipped from Lilly, Pa., to Elm Grove, Wis., reconsigned to North Milwaukee, Wis., were illegal and unreasonable. Reparation is asked. Rates are stated in amounts per net ton, except as otherwise noted.

The shipment was consigned by the Pioneer Coal & Coke Company to itself at Elm Grove. It moved, February 11, 1916, over the Pennsylvania Railroad from Lilly to Toledo, Ohio; Pere Marquette by rail to Ludington, Mich., and by boat to Milwaukee; and the Chicago, Milwaukee & St. Paul Railway, hereinafter called the Milwaukee, beyond. It was reconsigned to the Wisconsin Bridge & Iron Company at North Milwaukee, which is within the switching limits of Milwaukee, and moved over the Milwaukee, delivery being effected on or about March 10, 1916. Charges were assessed thereon in the sum of \$89.53 based on a joint proportional rate of \$2.05 to Milwaukee, a rate of 50 cents to Elm Grove, plus a charge of \$2 for recon-

signing the car at that point, and a rate of 50 cents to North Milwaukee. The tariffs on file with us show that the legal rate from Elm Grove to North Milwaukee was 3 cents per 100 pounds, or 60 cents per net ton. The shipment was therefore undercharged 10 cents per net ton.

At the time the shipment moved a through rate of \$2.65 applied from Lilly to North Milwaukee, made up of the rate of \$2.05 to Milwaukee and a rate of 60 cents beyond, without any charge for diversion or reconsignment if made at Ludington or Milwaukee. Complainant contends that this rate was legally applicable; that the movement from Elm Grove was performed by the Milwaukee without definite instructions; and that it should not be obliged to pay for the unnecessary movement to Elm Grove and return to North Milwaukee because the Pere Marquette ignored its order to hold the car at Ludington.

In order to avoid congestion at Milwaukee it is the practice of the Pere Marquette to hold cars at Ludington for reconsigning orders. Elm Grove is recognized as a blind-billing point, and when cars are billed to that point and the consignee is listed with the Pere Marquette, it is generally understood that the car is to be held at Ludington for orders. Complainant was on defendant's list, but the Pioneer Coal & Coke Company was not. On February 24, 1916, complainant telephoned to, and the following date wrote, the agent of the Pere Marquette at Milwaukee advising that three cars, including the shipment in question, were en route consigned to the Pioneer Coal & Coke Company at Elm Grove; that they were intended for complainant; and requested that the cars be held at Ludington for orders. Two of the cars were so held.

On March 1, 1916, the agent of the Pere Marquette at Milwaukee received complainant's order to reconsign the three cars to the Milwaukee Bridge & Iron Company at North Milwaukee. The dates of the arrival of the cars at Ludington and at Elm Grove are not disclosed, but the car in question was delivered to the Milwaukee at Milwaukee by the Pere Marquette on March 2 or 3, and moved to Elm Grove as stated. The other two cars were delivered at North Milwaukee, in accordance with complainant's directions. On March 6, 1916, complainant addressed a letter to the Milwaukee's agent at Elm Grove, stating that the Pere Marquette had received instructions to divert the car to North Milwaukee, and that the Pere Marquette's agent had agreed to order the car brought back to that point. After the receipt of this letter the Milwaukee reconsigned the car to North Milwaukee. Letters from the Pioneer Coal & Coke Company authorizing the carriers to honor the complainant's disposition orders for the three cars in question were received by the Milwaukee agents of

the Pere Marquette and the Milwaukee on March 6 and 7, 1916, respectively, after the car had passed Milwaukee.

The Pere Marquette stated that it does not make a practice of executing delivery orders for parties other than the consignee until written authority is received; that it had no legal right to comply with complainant's diversion order until authority from the Pioneer Coal & Coke Company was received; and that it was not required to do so in this case.

The flexibility of practice may be significant, but the fact that of three cars similarly consigned and billed two were held at Ludington and diverted to North Milwaukee, the carrier assuming the obligation to hold and divert at the request of a stranger of the transportation record without convincing proof of that stranger's controlling interest in the shipments or authority to change consignee or destination, can not be held with respect to the third car to impose such obligation as a legal requirement.

The true owner of the property in the possession of a common carrier may have the same diverted at a station en route between the shipping point and the place of destination while it is in transit but may *be required to produce the bill of lading or to furnish other evidence of ownership to entitle him* to this right. *Ryan v. G. N. Ry. Co.*, 90 Minn., 12; *Mitchie on Carriers*, 805, 856, Vol. II.

Here the Milwaukee's records disclosed no proprietary interest on the part of complainant in the shipment in controversy prior to March 7, 1916, when due authorization from the Pioneer Coal & Coke Company was received.

We conclude and find that the defendants were within their rights in declining to recognize complainant's order for holding at Ludington and in executing order for reconsignment to North Milwaukee; that, except for the undercharge hereinbefore shown, the charges assessed were those legally applicable; and that said charges are not shown to have been unreasonable.

An appropriate order will be entered dismissing the complaint

51 I. C. C.

No. 9811.
HERCULES POWDER COMPANY
v.
CHICAGO GREAT WESTERN RAILROAD COMPANY
ET AL.

Submitted January 11, 1918. Decided September 30, 1918.

Rates on toluol, in tank-car loads, from Milwaukee, Wis., and certain other eastern points to Hercules, Cal., found to have been unreasonable. Reparation awarded.

H. J. Taggart for complainant.

Robert Dunlap and *T. J. Norton* for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant, a corporation engaged in the manufacture of explosives at Hercules, Cal., alleges by complaint seasonably filed that the rates charged by defendants on 16 carloads of toluol, in tank-car loads, shipped from Milwaukee, Wis., Indianapolis, Ind., Woodward, Ala., Lackawanna and Solvay, N. Y., and Philadelphia, Pa., to Hercules, between July 3 and October 14, 1915, inclusive, were unreasonable and unjustly discriminatory. Reparation is asked. Rates are stated in cents per 100 pounds.

The details of the shipments follow:

¹ Includes a weighing charge of \$2, which is not assessed.

No rate was specifically applicable, and it therefore becomes necessary to determine whether the charges collected were reasonable, and, if not, what would have been reasonable charges. *Memphis Freight Bureau v. K. C. S. Ry. Co.*, 17 I. C. C., 90.

Toluol is a volatile inflammable liquid derived from coal tar and is used in the manufacture of explosives. The shipments were valued at from \$2.18 to \$5 per gallon, the present value being \$1.50 per gallon.

Effective October 15, 1915, the western classification, which governed, established a fifth-class rating, subject to actual weight, based on full gallonage capacity of the tank, except when the weight-carrying capacity of the car trucks is less, in which case the actual weight, subject to the weight-carrying capacity, will govern. The fifth-class rates in effect when the shipments moved were: \$1.75 from Milwaukee, \$1.80 from Indianapolis and Woodward, \$1.85 from Lackawanna, and \$1.90 from Solvay and Philadelphia. On October 18, 1915, the defendants established commodity rates of 75 cents from the points of origin to the California terminals. These rates were increased to 90 cents on April 5, 1916, and again on March 15, 1918, to \$1.05 from Milwaukee, \$1.10 from Indianapolis and Woodward, \$1.15 from Lackawanna, and \$1.25 from Solvay and Philadelphia. These rates also applied to Hercules. Prior to August 15, 1915, Hercules was included in the list of stations taking California terminal rates, but from that date until March 15, 1918, it took a 4-cent differential over the terminal rates.

Complainant contends that the charges collected were unreasonable and unjustly discriminatory to the extent that they exceeded the charges that would have accrued on basis of the subsequently established 75-cent rate to San Francisco on shipments made prior to August 15, 1915, and 79 cents after that date. Complainant cited carload commodity rates of 75 cents contemporaneously in effect from eastern points to Pacific coast terminals on concentrated lye in cans, creosote oil in tank cars, barrels, or drums, and glycerine in drums or barrels, and on acids in the opposite direction. No evidence was offered in support of the allegation of unjust discrimination. The fifth-class rate of \$1.90 from Solvay to Hercules, 2,925 miles over the route of movement, yielded 13 mills per ton-mile and, based on 57,090 pounds, the average loading from Solvay, 37.1 cents per car-mile. The 75-cent commodity rate yielded 5.1 mills per ton-mile, and, based on the weight shown above, 14.6 cents per car-mile. Both rates include a free return of empty cars.

For the defendants it was pointed out that the average value of the shipments was \$28,554 per car, and contended that the movement of toluol has been insufficient to justify commodity rates on it

lower than fifth class. They also urge that, considering the distance and the free return of empty equipment, the fifth-class rates were and are reasonable.

We find that the charges assailed were unreasonable to the extent that they exceeded those that would have accrued at the commodity rates of \$1.05 from Milwaukee, \$1.10 from Indianapolis and Woodward, \$1.15 from Lackawanna, and \$1.25 from Solvay and Philadelphia. We further find that the complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent that the charges paid exceeded those that would have accrued on the basis herein found reasonable; and that it is entitled to reparation in the following amounts, with interest:

From South Buffalo Railway Company; New York Central Railroad Company; and Atchison, Topeka & Santa Fe Railway Company-----	\$416. 22
From Cleveland, Cincinnati, Chicago & St. Louis Railway Company; Chicago, Rock Island & Pacific Railway Company; Chicago, Rock Island & Gulf Railway Company; El Paso & Southwestern Company; and Atchison, Topeka & Santa Fe Railway Company-----	1, 245. 02
From Chicago & North Western Railway Company; Chicago, Rock Island & Pacific Railway Company; Chicago, Rock Island & Gulf Railway Company; El Paso & Southwestern Company; Southern Pacific Company; and Atchison, Topeka & Santa Fe Railway Company--	589. 14
From Chicago, Milwaukee & St. Paul Railway Company; and Atchison, Topeka & Santa Fe Railway Company-----	409. 50
From Chicago, Milwaukee & St. Paul Railway Company; Missouri Pacific Railroad Company; Denver & Rio Grande Railroad Company; Western Pacific Railroad Company; and Atchison, Topeka & Santa Fe Railway Company-----	411. 88
From Chicago & North Western Railway Company; Union Pacific Railroad Company; Southern Pacific Company; and Atchison, Topeka & Santa Fe Railway Company-----	462. 56
From Pennsylvania Railroad Company; Pennsylvania Company; and Atchison, Topeka & Santa Fe Railway Company-----	775. 10
From Pennsylvania Railroad Company; Pennsylvania Company; Chicago, Rock Island & Pacific Railway Company; Chicago, Rock Island & Gulf Railway Company; El Paso & Southwestern Company; and Atchison, Topeka & Santa Fe Railway Company-----	773. 24
From Pennsylvania Railroad Company; Pennsylvania Company; Chicago Great Western Railroad Company; Union Pacific Railroad Company; Southern Pacific Company; and Atchison, Topeka & Santa Fe Railway Company-----	388. 96
From New York Central Railroad Company; Chicago & North Western Railway Company; Union Pacific Railroad Company; Southern Pacific Company; and Atchison, Topeka & Santa Fe Railway Company	799. 14
From St. Louis-San Francisco Railway Company; and Atchison, Topeka & Santa Fe Railway Company-----	407. 40

An order awarding reparation will be entered.

No. 9936.

ARMOUR & COMPANY

v.

DENVER & RIO GRANDE RAILROAD COMPANY ET AL

Submitted January 22, 1918. Decided September 30, 1918.

Rate on sulphate of potash, in carloads, from Marysvale, Utah, to New Orleans, La., for export, found to have been unreasonable. Reparation awarded.

H. K. Crafts for complainant.

Fred G. Wright for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant, a corporation with its principal office at Chicago, Ill., has a fertilizer factory at Havana, Cuba. By complaint filed October 29, 1917, it alleges that the rate charged by defendants on four carloads of sulphate of potash, shipped between November 29, 1915, and December 16, 1915, inclusive, from Marysvale, Utah, to New Orleans, La., for export was unreasonable. We are asked to award reparation. Rates are stated in amounts per 100 pounds.

The shipments, aggregating 223,807 pounds, moved by way of the Denver & Rio Grande Railroad to Pueblo, Colo.; Missouri Pacific Railway and St. Louis, Iron Mountain & Southern Railway, now the Missouri Pacific Railroad, to Alexandria, La.; and Texas & Pacific Railway to New Orleans, a total distance of 2,119 miles, from which point they were exported to Havana. Charges were collected in the sum of \$3,715.21 at the applicable domestic fifth-class rate of \$1.66. Complainant contends that the rate charged was unreasonable to the extent that it exceeded a subsequently established commodity rate of 45 cents, applicable on both domestic and export traffic.

Sulphate of potash is used in the manufacture of fertilizer, and prior to the European war was imported principally from Germany through Atlantic and Gulf ports. Since that time potash mines or beds in the Rocky Mountains adjacent to Marysvale have been developed. Some time prior to the movement of the shipments, complainant, with a view of obtaining sulphate of potash from Marysvale, requested an official of the Denver & Rio Grande Railroad to negotiate with connecting carriers to establish commodity rates from

Marysville to various fertilizer-manufacturing points and to New Orleans for export. The carrier agreed to establish commodity rates on approximately the same per ton per mile basis as applied in other territories where the traffic moved or had moved, this agreement contemplating rates of 44.5 cents to Chicago, 40 cents to St. Louis, Mo., and 45 cents to Memphis, Tenn., and New Orleans. The foregoing rates were established to Chicago and St. Louis on November 8, 1915, prior to the movement of the shipments in question, and to Memphis on November 30, 1915, but the 45-cent rate to New Orleans did not become effective until January 2, 1916. Complainant states that it was advised by the Denver & Rio Grande that the delay in publishing the rate to New Orleans was due to tariff complications. As the commodity rate had been established to St. Louis when the shipments moved, a combination on that point resulted in a rate of 55½ cents, based on the 40-cent commodity rate to St. Louis, and a commodity rate of 15½ cents beyond. The \$1.66 rate charged, which was also applicable through St. Louis, exceeded the aggregate of intermediate rates as shown. The shipments were not routed through St. Louis, nor did they so move.

The following rates on sulphate of potash, in carloads, are cited by complainant, in comparison:

¹ Import rate.

There are actual movements under the domestic rates cited. Prior to the war there was a heavy movement under the import rates shown.

Complainant also cites carload commodity rates, of 50 cents, minimum 40,000 pounds, on crude earth paint, from Marysville to New Orleans; and 40 cents, minimum 50,000 pounds, on arsenic from Salt Lake City, Utah, to New Orleans. These rates are materially lower than the class rates which would apply in the absence of commodity rates.

Based on 55,952 pounds, the average weight of the shipments in question, the rate charged yielded \$928.80 per car, 43.83 cents per car-mile, and 15.67 mills per ton-mile; the present rate would have

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yielded \$251.78 per car, 11.88 cents per car-mile, and 4.25 mills per ton-mile. While the minimum weight applicable in connection with the present 45-cent rate is 40,000 pounds, complainant states that the loading is now from 80,000 to 100,000 pounds.

Defendants made application on our special docket to make reparation to complainant on basis of the subsequently established rate, and at the hearing admitted that under the conditions prevailing when the shipments moved the application of the class rate was unreasonable.

We find that the rate charged was unreasonable to the extent that it exceeded 45 cents per 100 pounds; that complainant made the shipments as described and paid and bore charges thereon at the rate herein found unreasonable; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$2,708.07, with interest. An order will be entered accordingly.

As the rate found reasonable has been in effect for more than two years, no order for the future is necessary.

51 I. C. C.

No. 8841.¹

AMERICAN CYANAMID COMPANY

v.

MICHIGAN CENTRAL RAILROAD COMPANY ET AL.

Submitted December 18, 1916. Decided October 2, 1918.

Rates on cyanamid, in carloads, from Niagara Falls, Ontario, to Shreveport, La., and other points in the south found to have been illegal in some instances and unreasonable in others. Reparation awarded.

A. D. Whittemore for complainant.

John M. Sternhagen for Michigan Central Railroad Company and Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

C. Schonfelder, jr., for Texas & Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in the manufacture of fertilizer material at Niagara Falls, Ontario. By complaints, filed April 27 and May 6, 1916, it alleges that the rates charged on various carloads of cyanamid shipped from Niagara Falls to Shreveport, La., and other points in the south, between January 30 and December 4, 1915, were unreasonable, unduly prejudicial, and in violation of the fourth section of the act. Reparation is asked.

The complaint in No. 8841 relates to four carloads which moved over the Michigan Central Railroad and Cleveland, Cincinnati, Chicago & St. Louis Railway, hereinafter termed the Big Four, to East St. Louis, Ill., and beyond to Shreveport, two over the St. Louis, Iron Mountain & Southern and Texas & Pacific railways, and two over the St. Louis Southwestern Railway. Charges were collected on the first two shipments at a joint rate of 33.25 cents per 100 pounds legally applicable; on the remainder, aggregating 101,150 pounds, in the sum of \$378.30, at a rate of 37.4 cents per 100 pounds, for which no tariff authority appears. A joint rate of 33.25 cents per 100 pounds was applicable, so that the latter shipments were overcharged 4.15 cents per 100 pounds, or \$41.98.

¹ This report also embraces No. 8841 (Sub-No. 1), Same v. Michigan Central Railroad Company et al.; No. 8841 (Sub-No. 2), Same v. Michigan Central Railroad Company et al.; and No. 8841 (Sub-No. 3), Same v. Michigan Central Railroad Company et al.

Complainant contends that the 33.25-cent rate, equivalent to \$6.65 per net ton, is unreasonable to the extent that it exceeded a rate of \$6.15 per net ton, composed of rates of \$4.65 per net ton on cyanamid, in carloads, from Niagara Falls to New Orleans, La., and 7.5 cents per 100 pounds, equivalent to \$1.50 per net ton on import shipments of nitrate of soda and several kindred fertilizer materials, from New Orleans to Shreveport. The local rate from New Orleans to Shreveport was \$2 per net ton. We have repeatedly held that a joint rate is unreasonable to the extent that it exceeds the lowest combination of rates which would be applicable if the joint rate were canceled. In this case the combination which would have applied in the absence of the joint rate was \$6.65, which is equivalent to the joint rate legally applicable to these shipments.

We find that the rate legally applicable on the shipments to Shreveport is not shown to have been unreasonable or otherwise in violation of the act, except that on two of the shipments the charges collected were illegal to the extent that they exceeded those that would have accrued at a rate of 33.25 cents per 100 pounds. We further find that the complainant in No. 8841 made the shipments as described and paid and bore the charges thereon; that it has been damaged and is entitled to reparation in the sum of \$41.98, with interest, from the Michigan Central Railroad Company, Cleveland, Cincinnati, Chicago & St. Louis Railway Company, and St. Louis Southwestern Railway Company.

Sub-No. 1 involves the charges on two carloads of cyanamid to Hattiesburg, Miss., which moved over the Michigan Central and Big Four to Cincinnati, Ohio; and the Cincinnati, New Orleans & Texas Pacific Railway and the Alabama Great Southern and the New Orleans & Northeastern railroads beyond. The shipments aggregated 80,980 pounds, and charges were collected thereon in the sum of \$301.24 at a rate equivalent to 37.2 cents per 100 pounds, or \$7.44 per net ton, based on a proportional commodity rate of 13.7 cents per 100 pounds to Cincinnati and a rate of \$4.70 per net ton beyond. The defendants' tariffs provided specifically for the construction of through rates from Niagara Falls to Hattiesburg by combination on the Ohio River, reference being made to the tariffs of individual carriers naming rates to and from the crossings. The rates so made possessed the essentials of joint rates. The Michigan Central tariff naming the 13.7-cent rate to Cincinnati, an Ohio River crossing, was not referred to in the defendants' joint tariff as being a tariff that could be used in constructing through rates. Their joint tariff did refer to a Michigan Central class tariff naming class rates from Niagara Falls to Cincinnati, and the rates named in that tariff were the only legal components to Cincinnati on this traffic. Cyanamid, in carloads, was rated sixth class in the official classification

which governed. The sixth-class rate from Niagara Falls to Cincinnati on shipments destined to Hattiesburg was 14.7 cents per 100 pounds, resulting in a through rate equivalent to \$7.64 per net ton. These shipments were therefore undercharged 1 cent per 100 pounds, or a total of \$8.10. A rate of \$5.55 per net ton is asked, the basis of which is a rate of \$4.65 from Niagara Falls to Gulfport, Miss., and an intrastate rate of 90 cents per net ton beyond. An interstate rate of \$1.20 per net ton applied on cyanamid, in carloads, from Gulfport to Hattiesburg. The Gulfport combination of interstate rates made a through rate of \$5.85 per net ton from Niagara Falls to Hattiesburg.

We find that the rate legally applicable on the shipments to Hattiesburg was unreasonable to the extent that it exceeded \$5.85 per net ton; that the complainant in Sub-No. 1 made the shipments as described and paid and bore charges thereon; that it has been damaged to the extent that the charges paid exceeded those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$64.38, with interest, from all the defendants in Sub-No. 1 except the Gulf & Ship Island Railroad Company. Collection of the undercharge may be waived.

The charges on a carload of cyanamid to Meridian, Miss., are assailed in Sub-No. 2. This shipment moved over the Michigan Central & Big Four to Cincinnati; Cincinnati, New Orleans & Texas Pacific and Alabama Great Southern beyond. It weighed 40,470 pounds, and charges were collected thereon in the sum of \$134.36 at the sixth-class rate of 14.7 cents per 100 pounds to Cincinnati, and a commodity rate of \$3.70 per net ton beyond, both of which rates were legally applicable. A rate of \$4.65 per net ton applied on cyanamid, in carloads, from Niagara Falls to Vicksburg, Miss., and a rate of \$1 per net ton from Vicksburg to Meridian, making a combination of \$5.65, which is the rate upon basis of which reparation is sought.

We find that the rate assailed on the shipment to Meridian was unreasonable to the extent that it exceeded \$5.65 per net ton; that complainant made the shipment as described and paid and bore the charges thereon; that it has been damaged to the extent that the charges paid exceeded those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$20.03, with interest, from all of the defendants in Sub-No. 2 except the Alabama & Vicksburg Railway Company.

Reparation is sought in Sub-No. 3 on four carloads of cyanamid to Dothan, Ala., and four to Montgomery, Ala. One of the shipments to Dothan weighed 60,480 pounds and moved over the Michigan Central and Big Four to Cincinnati; Louisville & Nashville Railroad to Montgomery; Atlantic Coast Line Railroad, not a party

defendant, beyond. Charges were collected thereon in the sum of \$255.53, at a rate equivalent to \$8.45 per net ton, based on a proportional commodity rate of 13.7 cents per 100 pounds to Cincinnati and a rate of \$5.71 per net ton beyond. The other three shipments to Dothan moved over the same route to Montgomery and thence over the Central of Georgia Railway. Two aggregated 101,284 pounds and charges were collected thereon in the sum of \$427.90, at a rate equivalent to \$8.45 per net ton, above mentioned. The fourth shipment to Dothan, which moved over the latter route, weighed 50,800 pounds, and charges were collected thereon in the sum of \$215.14, at a rate equivalent to \$8.47 per net ton, for which no tariff authority appears.

The defendants' tariffs provided a specific basis for making rates from Niagara Falls to Dothan on this traffic, as previously explained in connection with the shipments to Hattiesburg and Meridian. The sixth-class rate from Niagara Falls to Cincinnati of 14.7 cents per 100 pounds added to the legally applicable commodity rate of \$5.71 per net ton from Cincinnati to Dothan made a through rate equivalent to \$8.65 per net ton. The first three shipments to Dothan therefore were undercharged 1 cent per 100 pounds and the fourth shipment was undercharged 18 cents per net ton.

The four shipments to Montgomery aggregated 202,410 pounds, and moved over the Michigan Central and Big Four to Cincinnati and Louisville & Nashville beyond. Charges were collected thereon in the sum of \$682.12, at a rate equivalent to \$6.74 per net ton, based on a proportional commodity rate of 13.7 cents per 100 pounds from Niagara Falls to Cincinnati, and \$4 per net ton beyond. The legal component from Niagara Falls to Cincinnati was the sixth-class rate of 14.7 cents per 100 pounds, making the through rate from Niagara Falls to Montgomery equivalent to \$6.94 per net ton. These shipments were undercharged 1 cent per 100 pounds.

Complainant contends that the through rates were unreasonable to the extent that they exceeded the rates to and from Pensacola, Fla. A joint rate of \$4.85 per net ton applied from Niagara Falls to Pensacola and rates of \$2.71 and \$1.80 per net ton from Pensacola to Dothan and Montgomery, respectively, making combination rates contemporaneously in effect of \$7.36 and \$6.45, respectively.

We find that the rates legally applicable on the shipments to Dothan and Montgomery were unreasonable to the extent that they exceeded \$7.36 and \$6.45 per net ton, respectively; that the complainant made the shipments as described in Sub-No. 3 and paid and bore the charges thereon; that it was damaged to the extent that the charges paid exceeded those that would have accrued at the rates herein found reasonable; and that it is entitled to reparation in the

which governed. The sixth-class rate from Niagara Falls to Cincinnati on shipments destined to Hattiesburg was 14.7 cents per 100 pounds, resulting in a through rate equivalent to \$7.64 per net ton. These shipments were therefore undercharged 1 cent per 100 pounds, or a total of \$8.10. A rate of \$5.55 per net ton is asked, the basis of which is a rate of \$4.65 from Niagara Falls to Gulfport, Miss., and an intrastate rate of 90 cents per net ton beyond. An interstate rate of \$1.20 per net ton applied on cyanamid, in carloads, from Gulfport to Hattiesburg. The Gulfport combination of interstate rates made a through rate of \$5.85 per net ton from Niagara Falls to Hattiesburg.

We find that the rate legally applicable on the shipments to Hattiesburg was unreasonable to the extent that it exceeded \$5.85 per net ton; that the complainant in Sub-No. 1 made the shipments as described and paid and bore charges thereon; that it has been damaged to the extent that the charges paid exceeded those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$64.38, with interest, from all the defendants in Sub-No. 1 except the Gulf & Ship Island Railroad Company. Collection of the undercharge may be waived.

The charges on a carload of cyanamid to Meridian, Miss., are assailed in Sub-No. 2. This shipment moved over the Michigan Central & Big Four to Cincinnati; Cincinnati, New Orleans & Texas Pacific and Alabama Great Southern beyond. It weighed 40,470 pounds, and charges were collected thereon in the sum of \$134.36 at the sixth-class rate of 14.7 cents per 100 pounds to Cincinnati, and a commodity rate of \$3.70 per net ton beyond, both of which rates were legally applicable. A rate of \$4.65 per net ton applied on cyanamid, in carloads, from Niagara Falls to Vicksburg, Miss., and a rate of \$1 per net ton from Vicksburg to Meridian, making a combination of \$5.65, which is the rate upon basis of which reparation is sought.

We find that the rate assailed on the shipment to Meridian was unreasonable to the extent that it exceeded \$5.65 per net ton; that complainant made the shipment as described and paid and bore the charges thereon; that it has been damaged to the extent that the charges paid exceeded those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$20.03, with interest, from all of the defendants in Sub-No. 2 except the Alabama & Vicksburg Railway Company.

Reparation is sought in Sub-No. 3 on four carloads of cyanamid to Dothan, Ala., and four to Montgomery, Ala. One of the shipments to Dothan weighed 60,480 pounds and moved over the Michigan Central and Big Four to Cincinnati; Louisville & Nashville Railroad to Montgomery; Atlantic Coast Line Railroad, not a party

defendant, beyond. Charges were collected thereon in the sum of \$255.53, at a rate equivalent to \$8.45 per net ton, based on a proportional commodity rate of 13.7 cents per 100 pounds to Cincinnati and a rate of \$5.71 per net ton beyond. The other three shipments to Dothan moved over the same route to Montgomery and thence over the Central of Georgia Railway. Two aggregated 101,284 pounds and charges were collected thereon in the sum of \$427.90, at a rate equivalent to \$8.45 per net ton, above mentioned. The fourth shipment to Dothan, which moved over the latter route, weighed 50,800 pounds, and charges were collected thereon in the sum of \$215.14, at a rate equivalent to \$8.47 per net ton, for which no tariff authority appears.

The defendants' tariffs provided a specific basis for making rates from Niagara Falls to Dothan on this traffic, as previously explained in connection with the shipments to Hattiesburg and Meridian. The sixth-class rate from Niagara Falls to Cincinnati of 14.7 cents per 100 pounds added to the legally applicable commodity rate of \$5.71 per net ton from Cincinnati to Dothan made a through rate equivalent to \$8.65 per net ton. The first three shipments to Dothan therefore were undercharged 1 cent per 100 pounds and the fourth shipment was undercharged 18 cents per net ton.

The four shipments to Montgomery aggregated 202,410 pounds, and moved over the Michigan Central and Big Four to Cincinnati and Louisville & Nashville beyond. Charges were collected thereon in the sum of \$682.12, at a rate equivalent to \$6.74 per net ton, based on a proportional commodity rate of 13.7 cents per 100 pounds from Niagara Falls to Cincinnati, and \$4 per net ton beyond. The legal component from Niagara Falls to Cincinnati was the sixth-class rate of 14.7 cents per 100 pounds, making the through rate from Niagara Falls to Montgomery equivalent to \$6.94 per net ton. These shipments were undercharged 1 cent per 100 pounds.

Complainant contends that the through rates were unreasonable to the extent that they exceeded the rates to and from Pensacola, Fla. A joint rate of \$4.85 per net ton applied from Niagara Falls to Pensacola and rates of \$2.71 and \$1.80 per net ton from Pensacola to Dothan and Montgomery, respectively, making combination rates contemporaneously in effect of \$7.36 and \$6.45, respectively.

We find that the rates legally applicable on the shipments to Dothan and Montgomery were unreasonable to the extent that they exceeded \$7.36 and \$6.45 per net ton, respectively; that the complainant made the shipments as described in Sub-No. 3 and paid and bore the charges thereon; that it was damaged to the extent that the charges paid exceeded those that would have accrued at the rates herein found reasonable; and that it is entitled to reparation in the

sum of \$62.30, with interest, from the Michigan Central Railroad Company, Cleveland, Cincinnati, Chicago & St. Louis Railway Company, and Louisville & Nashville Railroad; and in the sum of \$83.37, with interest, from the Michigan Central Railroad Company, Cleveland, Cincinnati, Chicago & St. Louis Railway Company, Louisville & Nashville Railroad, and Central of Georgia Railway Company. Although the Atlantic Coast Line Railroad Company is not a party to this proceeding, it participated in the transportation of one shipment to Dothan, and will be expected to join in the payment of the reparation due thereon. Collection of the undercharges may be waived.

The complainant alleges that the rates from Niagara Falls to certain of the destination points are in excess of the aggregate of the intermediate rates. No such departures are shown to exist, but it appears that the rates to many of the points depart from the long-and-short-haul rule of the fourth section. These departures are protected by appropriate fourth section applications not heard with this proceeding. The defendants' tariffs do not now provide for the construction of through rates from and to the points involved on the Ohio River, and therefore the lowest combinations apply.

An order awarding reparation will be entered.

51 I. C. C.

No. 9320.¹

PORTAGE SILICA COMPANY
v.
ERIE RAILROAD COMPANY ET AL.

Submitted May 21, 1917. Decided September 30, 1918.

Rates on sand and gravel, in carloads, from Phalanx and Geauga Lake, Ohio, to points in the Pittsburgh, Pa., district found justified. Complaints dismissed.

John F. Lent for complainants.

M. B. Pierce and *James Stillwell* for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The defendants' rates of 84 cents and \$1.05 per net ton on sand and gravel, in carloads, from Phalanx and Geauga Lake, Ohio, respectively, to points in the Pittsburgh, Pa., district, are assailed herein, by complaints filed November 21, 1916, as unreasonable and unduly prejudicial. The complainants seek reparation on shipments made subsequent to October 10, 1916, and reasonable rates. Rates are stated in amounts per net ton.

The points of origin are on the Mahoning division of the Erie Railroad, 23 and 48 miles, respectively, northwest of Youngstown, Ohio, and 88 and 111 miles, respectively, from Pittsburgh. In 1908 the Erie included Phalanx in the so-called valley group on sand and gravel to Youngstown to enable producers at Phalanx to compete with nearby points. This grouping automatically established a 70-cent rate to the Pittsburgh district. On October 26, 1914, following *The Five Per Cent Case*, 31 I. C. C., 351, this rate was increased to 74 cents, and on October 10, 1916, to 84 cents.

On April 21, 1913, the Erie published a commodity rate of \$1 on sand and gravel from Geauga Lake to Pittsburgh, and on June 6, 1914, included Geauga Lake in the valley group. Through error, the valley-group rate was made applicable on eastbound as well as westbound traffic with the result that there were contemporaneously published to Pittsburgh proper a specific rate of \$1 and a group rate of 70 cents. On October 26, 1914, following *The Five Per Cent Case*, *supra*, the \$1 rate was increased to \$1.05 and the 70-cent rate to 74

¹ This report also embraces No. 9320 (Sub-No. 1), *Gauga Silica Sand Company v. Same*.

cents. On April 10, 1915, the 74-cent rate to Pittsburgh was canceled, leaving only the \$1.05 rate to apply, and on October 10, 1916, the 74-cent rate to all points in the Pittsburgh district was canceled.

The complainants contend that Phalanx and Geauga Lake were and are entitled to the valley-group rate basis on sand and gravel shipped to points in the Pittsburgh district and that the rates assailed were and are unreasonable and unduly prejudicial to the extent that they exceeded and exceed 74 cents. Also that the profit on their product is insufficient to enable them to meet the changed rate situation and that the application of higher rates materially reduces their tonnage into the Pittsburgh district. A statement was submitted showing a decrease in the number of shipments from Phalanx to the Pittsburgh district during 1916-1917, although an increased demand for sand in that district is alleged.

Silica sand similar to that shipped by complainants is also produced at many other points in Ohio, from some of which the rates to the Pittsburgh district are higher and from some lower than from Phalanx and Geauga Lake, but there is no showing that any of these points actually compete with complainants in the Pittsburgh district or that the existence of the lower rates adversely affects their sales in that general market. The complainants cited various intrastate and interstate rates on sand and gravel, but offered no evidence to show the relative transportation conditions as between the rates cited and those assailed. The comparisons are therefore of little value.

It was testified on behalf of the defendants that the 70-cent rate from points in the valley group was based originally on the distance from Youngstown to Pittsburgh, 65 miles; that Phalanx and Geauga Lake are outside the natural limits of that group; that, with the exception of the rates assailed, the class and commodity rates from these points are not and never have been on the valley-group basis; that the 70 and 74 cent rates were subnormal and their continuance was due to an error; and that the rates were subsequently increased to remove discriminations against other producing points, including points in the Massilon, Ohio, district, 110 miles from Pittsburgh, from which the rate on sand was \$1.05. The decrease in the tonnage shipped by the complainants to the Pittsburgh district is alleged by the defendants to have been due in part to car shortage.

The defendants cited rates from Ohlton, Ohio, a sand-producing point on the Erie in the valley group, to illustrate the rate situation that resulted from including Phalanx and Geauga Lake in that group. The rates eastbound from these three points to Pittsburgh were previously the same, while the rates contemporaneously applicable on northbound and westbound traffic from Phalanx and

Geauga Lake were lower than from Ohlton. For example, the rate on sand from Phalanx to Cleveland, Ohio, 45 miles, was 48 cents; from Geauga Lake, 21 miles, 37 cents; and from Ohlton, 62 miles, 63 cents. The defendants assert that to give these points the identical rates on traffic to the Pittsburgh district and to accord Phalanx and Geauga Lake lower rates on northbound and westbound traffic is violative of the recognized principles of rate making. After the hearing the rate on sand from Ohlton to Pittsburgh was increased to \$1.10. Empty equipment for complainants' use must be supplied from either Youngstown or Cleveland. The outbound movements from complainants' plants are over two and often three or more lines, as compared with single-line hauls from some points in the valley group.

Frequent switching and breaking up of trains, short hauls, and delivery service in congested parts of the Pittsburgh district are also urged by the defendants in support of their contention that the rates assailed were abnormally low. It was explained for the defendants that their rates on sand had been in effect for several years without general changes, excepting those following the *Five Per Cent Case, supra*; that in several instances changes in rates have resulted in disturbances of the adjustment but that a general revision of the rates on sand and gravel has been in progress since July, 1916. Since the hearing the rates were increased to \$1.20 from Phalanx and \$1.40 from Geauga Lake.

We find that defendants have justified the rates assailed, and an order dismissing the complaints will be entered.

51 I. C. C.

No. 9729.
ARMOUR & COMPANY
v.
BOSTON & ALBANY RAILROAD COMPANY ET AL.

Submitted December 8, 1917. Decided October 2, 1918.

Charges collected on dressed beef, in carloads, from certain points in Illinois, Kansas, Texas, Missouri, Nebraska, Iowa, and Canada to Boston, Mass., there stored, and subsequently exported to France, not shown to have been illegal or unreasonable but found to have been unduly prejudicial. Reparation denied and complaint dismissed.

H. K. Crafts for complainant.

George H. Fernald, jr., for Boston & Albany Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

The charges assessed on numerous carloads of dressed beef shipped between February 1 and June 1, 1915, from certain points in Illinois, Kansas, Texas, Missouri, Nebraska, Iowa, and Canada to Boston, Mass., there stored, and subsequently exported from East Boston on a vessel that sailed June 20, 1915, are assailed by this complaint, seasonably filed, as illegal, unreasonable, and unduly prejudicial to the extent that they included a charge of 4 cents per 100 pounds assessed by the Boston & Albany Railroad, hereinafter called the defendant, for delivery to ship at East Boston. Reparation and the establishment of reasonable rates, rules, and regulations are prayed.

The beef was consigned to complainant, in care of the Quincy Market, Cold Storage & Warehouse Company, hereinafter termed the storage company, at Boston, the words "for export" being noted on the bills of lading. The shipments moved over the lines of various defendants to Albany, N. Y., and thence over the defendant's line to Boston, where they were turned over to the Union Freight Railroad for delivery to the storage company. They remained in storage until June, 1915, when they were forwarded under new bills of lading from the storage company's warehouse over the Union Freight to its connection with the defendant, and thence over the latter's road to its docks at East Boston, where they were loaded into a vessel and exported to France on June 20, 1915.

In addition to the charges assessed at the line-haul rates to Boston, and those assessed for storage and by the Union Freight for switching, the defendant assessed charges at a commodity export rate of 4 cents per 100 pounds, minimum 20,000 pounds, for the movement to East Boston from its connection with the Union Freight. If any charge was legally applicable for the latter movement, 4 cents was the correct rate. It is this charge that is specifically attacked.

The defendant's tariffs in effect during the period in question provided, with respect to export traffic originating at Albany or points on or by way of lines connecting with the defendant's line at Albany, as follows:

(1) On export freight the rate to Boston, or East Boston, Mass., will include deliveries to steamers or vessels at Boston, except that on l. c. l. freight, if the earnings of the Boston & Albany R. R. and connections on any single consignment are less than \$2 the rate will not include delivery to steamers or vessels, but all charges for such delivery will be in addition to the rate to Boston.

(5) On traffic, in carloads, from points beyond Albany, N. Y., which is placed in store in warehouses on the Boston & Albany R. R. tracks at East Boston, or on the Union Freight R. R. tracks at Boston, and identity preserved, and later exported in steamers from the docks at the Boston & Maine R. R., switching charges of the B. & M. R. R. will be absorbed.

The complainant contends: (1) That as there is no limitation in rule 1 the through rates from the points of origin to Boston included delivery at the docks of the defendant, even though the shipments were stored at Boston, and that the defendant's charges for the transportation to East Boston were illegal; and (2) that if such charges were legal, then the resulting through charges were unreasonable, and were unduly prejudicial to the traffic in question to the preference of traffic moving under similar conditions over the defendant's line for subsequent export from the docks of the Boston & Maine charges in connection with which were subject to rule 5. The complainant argues that rule 5 provides for the delivery of freight from the storage company's warehouse to the Boston & Maine's docks without charge in addition to the line-haul rates and the Union Freight's switching charges.

The defendant concedes that the export rates to Boston also applied to East Boston, but states that rule 1 was applicable only to a direct movement of export freight from point of origin to ship side, to which movement the through rate was applicable, and included delivery to steamers at Boston & Maine docks as well as defendant's docks. It insists that the rule does not permit the storage of shipments at Boston and subsequent delivery at ship side at the through rate from point of origin to Boston; and that the carriers performed their contract of carriage when delivery of the shipments was made at the storage company's plant, which was the

billed destination. We are of opinion that the charges assessed by the defendant for the movement from its connection with the Union Freight to East Boston were legally applicable.

The complainant does not contend that the 4-cent rate was unreasonable for a local movement at Boston, but urges that it was unreasonable as part of the through rates from points of origin, to Boston. At the time of movement the rate on dressed beef from Chicago, Ill., cited by complainant as a representative point to Boston, 993 miles, was 47.3 cents. Based on 21,200 pounds, the average weight of the shipments under consideration, the rate cited would yield \$100.31 per car, 10.10 cents per car-mile, and 9.54 mills per ton-mile. Effective December 18, 1915, the defendant established a flat charge of \$5 per car in lieu of the 4-cent charge in order, it states, to meet the competition of the Grand Trunk Railway, which published a similar charge at Portland, Me. It contends that the \$5 charge is unreasonably low. The distance over defendant's line from its connection with the Union Freight to its docks at East Boston is approximately 14 miles. The defendant shows that, by exception to the official classification, dressed beef, in carloads, is rated third class, minimum 20,000 pounds. At the time of movement the third-class rate in effect from Boston to East Boston was 6 cents, and on other parts of defendant's line 8 cents for distances ranging from 11 to 15 miles.

With respect to the allegation of undue prejudice the defendant urges that rule 5 does not provide free transportation for all that portion of the movement from the storage company's warehouse to the Boston & Maine docks beyond the rails of the Union Freight, but merely that the Boston & Maine's switching charges will be absorbed if the defendant participates in the movement from the storage warehouse. In other words, it argues that in order to obtain the advantage of rule 5 a shipment, after having been placed in storage, must not be delivered by the Union Freight to the Boston & Maine but must again be delivered to the defendant for movement to the Boston & Maine; that the movement from the storage warehouse is a separate transaction; and that unless the defendant performed a portion of the movement, for which its regular charge would be made, it would receive no revenue out of which to absorb the Boston & Maine's switching charges. The defendant contends that under this arrangement the shipper would be charged upon the same basis whether his shipment went from the storage warehouse to defendant's East Boston docks or to the Boston & Maine's docks. Effective December 18, 1915, rule 5 was amended to read as follows:

On traffic, in carloads, via the Boston & Albany R. R. from points west of Albany, N. Y., which is placed in store in warehouses on the Boston & Albany

R. R. tracks at East Boston, or on the Union Freight R. R. tracks at Boston, and identity preserved, and later exported in steamers from the docks at the Boston & Maine R. R., will be subject to charges from East Boston or Boston to connection with the Boston & Maine R. R. as per tariffs lawfully on file with Interstate Commerce Commission * * * and switching charges of the B. & M. R. R. will be absorbed.

This rule is still in effect, except that on May 12, 1917, the words "and wharfage" were inserted in the last sentence after the word "switching." It was explained for the defendant that the amendment of December 18, 1915, was made in order to prevent any future misunderstanding. It is our opinion that under rule 5, as published during the period of movement or at present, the defendant must absorb the Boston & Maine's switching charges on shipments, subject to that rule, moving from the storage company's warehouse over the Union Freight and the Boston & Maine.

We find that the charges assailed are not shown to have been or to be unreasonable, but that under rule 5 export traffic of the description here in question, stored in the storage company's warehouse and subsequently forwarded to the docks of the Boston & Albany at East Boston for transshipment was unduly prejudiced to the preference and advantage of similar traffic stored in the storage company's warehouse and subsequently forwarded to docks of the Boston & Maine for transshipment, to the extent that the charges on the former exceeded the charges on the latter. As the record contains no proof that the undue prejudice found to exist resulted in damage to complainant, no reparation will be awarded. As the carriers concerned are now under federal control no finding or order for the future can be made effective in the present state of the pleadings. An order dismissing the complaint will be entered.

No. 9746.

CINCINNATI GRAIN & HAY COMPANY

v.

PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS
RAILROAD COMPANY ET AL.

Submitted January 7, 1918. Decided October 2, 1918.

Rate on bulk shelled corn, in carloads, from Rushville, Ind., to Pocahontas, Va., and reconsigned to Baltimore, Md., for export, found to have been unreasonable. Reparation awarded.

Samuel S. Reeves for complainant.*Delos Thomas* for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant, a corporation engaged in the grain business at Cincinnati, Ohio, alleges by complaint filed May 28, 1917, that the charges collected by defendants on a carload of bulk shelled corn, shipped December 30, 1915, from Rushville, Ind., to Pocahontas, Va., and reconsigned to Baltimore, Md., were unreasonable, and asks reparation. Rates are stated in cents per 100 pounds.

The shipment, weighing 73,685 pounds, moved over the Pittsburgh, Cincinnati, Chicago & St. Louis Railroad to Cincinnati, where it was unloaded at complainant's elevator. On January 20, 1916, 56,290 pounds were shipped over the Norfolk & Western Railway to Pocahontas, where the corn was refused by the consignee and thereupon reconsigned to Baltimore, Md., for export. The further movement was over the Norfolk & Western to Shenandoah Junction, W. Va., and the Baltimore & Ohio Railroad to Baltimore. The complainant attacks only the freight charges, aggregating \$291.77, collected on the amount of corn that moved through to Baltimore. The rate legally applicable was 51.7 cents, composed of rates of 5.3 cents to Cincinnati, 19.1 cents to Pocahontas, and a joint sixth-class rate of 27.3 cents, governed by the official classification, beyond. The shipment was overcharged 75 cents.

Pocahontas is on a branch line of the Norfolk & Western, about 1½ miles from Bluestone, W. Va., the connection with the main line, and therefore is not directly intermediate to Baltimore from Cincinnati. Under the contemporaneous reconsignment circular, the aggregate of intermediate rates from Pocahontas to Baltimore that would have applied in the absence of the joint sixth-class rate was 16.9

cents, made up of 6.3 cents to Shenandoah Junction, one-half of the local rate, and 10.6 cents beyond. The representative of the Norfolk & Western, believing that, under the reconsignment tariff and but for the existence of the sixth-class rate, components of 6.3 cents, each, to and from Shenandoah Junction, or 12.6 cents, would have applied, admitted that the rate beyond Pocahontas was unreasonable to the extent that it exceeded that amount and offered to make reparation on that basis.

By the terms of the reconsignment circular, when the ultimate destination was beyond the rails of the Norfolk & Western "and the rate from diverting or reconsigning point thereto would be constructed by combination of full tariff rate to some Norfolk & Western Railway station plus full tariff rate beyond," the applicable basis would have been the full tariff rate to the reconsignment point, if not intermediate to ultimate destination and involving a back haul, plus one-half of the tariff rate thence to the Norfolk & Western rate-basing point and full tariff rate beyond. If a combination basis had been effective from Pocahontas to Baltimore, a rate of 16.9 cents would have been available to complainant, but the existence of the joint class rate excluded the application of the above provision.

May 25, 1916, provision was made for the reconsignment of corn at points, including Pocahontas, where out-of-line or back hauls were required, at the joint rate from point of origin to ultimate destination, plus certain additional charges for out-of-line or back hauls and for the reconsigning service. There was then and since has been no joint rate from either Rushville or Cincinnati to Baltimore over the route of movement or through Bluestone; and on January 13, 1918, the amended rules were canceled, upon the expiration of our order in the *Reconsignment Case*, 47 I. C. C., 590. The ensuing and present rules do not authorize reconsignment at Norfolk & Western points where out-of-line or back hauls are necessary, except at the rates to and from the reconsignment point, plus certain reconsignment charges.

We find that the applicable through rate was unreasonable to the extent that the component from Pocahontas to Baltimore exceeded 16.9 cents per 100 pounds; that complainant made the shipment as described and paid and bore the charges thereon; that it was damaged to the extent of the difference between the charges collected, inclusive of the overcharge, and those that would have accrued on the basis herein found reasonable; and that it is entitled to reparation in the sum of \$59.29, with interest. As the carriers concerned are now under federal control no finding or order for the future can be made effective in the present state of the pleadings.

An appropriate order will be entered.

No. 9536.

WILLAMETTE VALLEY LUMBERMEN'S ASSOCIATION
v.
SOUTHERN PACIFIC COMPANY ET AL.

Submitted October 3, 1918. Decided October 22, 1918.

Rates charged for the transportation of lumber and forest products from certain points in the Willamette Valley in Oregon to various points in the states of Montana, Wyoming, North Dakota, South Dakota, Nebraska, Minnesota, Wisconsin, and Michigan, and in the provinces of Manitoba and Saskatchewan, Canada, found to be relatively unreasonable and unjust and unduly prejudicial to the extent they exceed the rates contemporaneously maintained from the coast group, including Portland, Oreg., to the same destinations, and defendants required to establish joint rates on the basis specified.

Joseph N. Teal and William C. McCulloch for complainant.

F. H. Wood, Ben C. Dey, and C. W. Durbrow for Southern Pacific Company; *Charles Donnelly* and *B. W. Scandrett* for Chicago, Milwaukee & St. Paul Railway Company; Great Northern Railway Company; Northern Pacific Railway Company; and Spokane, Portland & Seattle Railway Company; and *H. A. Scandrett* and *Blaine Hallock* for Union Pacific system.

W. F. Staley for Department of Agriculture, intervener.

R. Walton Moore and *B. W. Scandrett* for Director General of Railroads.

REPORT OF THE COMMISSION.

Complainant is a voluntary association of manufacturers of forest products, operating mills located on the main and branch lines of the Southern Pacific Company in the Willamette Valley in Oregon. In its complaint filed March 6, 1917, it alleges that defendants' rates on forest products, including lumber, in carloads, from the points where the mills of its members are located to points in the states of Montana, Wyoming, North Dakota, South Dakota, Nebraska, Minnesota, Wisconsin, and Michigan, and the provinces of Manitoba and Saskatchewan, Canada, which are made by combination on Portland, Oreg., are unreasonable, unduly prejudicial to complainant, and unduly preferential of other shippers and localities in the northwest territory. It asks the establishment of joint rates on the "coast group" basis of rates which applies from Portland and other points along the Columbia River and in western Washington. The United States Department of Agriculture was permitted to intervene and filed a brief in support of the complaint. Rates herein mentioned are stated in cents per 100 pounds.

The Willamette Valley in western Oregon extends south from Portland to some distance beyond Eugene, Oreg., and lies between the Cascade and Coast ranges of mountains. The most southerly point involved in this complaint is Leona, Oreg., which is 159 miles south of Portland. The most northerly point involved is Sherwood, Oreg., which is 19 miles south of Portland. The average distance of the mills of complainant's members from Portland is 82½ miles.

No joint rates on forest products have ever been published from points in the Willamette Valley over the lines of the Southern Pacific to the points of destination herein involved on the Northern Pacific Railway; Great Northern Railway; Chicago, Milwaukee & St. Paul Railway; and other defendant railroads, hereinafter designated the northern lines, except to such points as are on or reached via the Union Pacific system. The combination of the Southern Pacific's local rate to Portland and the coast group rate from Portland to destination has heretofore applied between such points. The rates from the points where the mills of complainant's members are located to Portland range from 4 to 13 cents and average 8.6 cents. The coast group rates applicable from Portland to most points in Montana are 35 cents; to most points in North and South Dakota, 40 cents; and to points farther east, to and including St. Paul, Minn., 45 cents. These rates were established pursuant to the Commission's report and order in *Oregon & Washington Lumber Mfrs. Assn. v. U. P. R. R. Co.*, 14 I. C. C., 1, and *Pacific Coast Lumber Mfrs. Assn. v. N. P. Ry. Co.*, 14 I. C. C., 23.

For some time the Southern Pacific has been negotiating with the Northern Pacific and Great Northern railways for the establishment of joint rates on forest products from the Willamette Valley to the 40 and 45 cent territory on the northern lines. The negotiations have not been successful, principally because the carriers could not agree upon divisions of the joint rates. The Southern Pacific is willing to join in the establishment of joint rates on lumber upon the basis of the rates applying from the coast group, but the Northern Pacific and Great Northern object to the establishment of joint rates on basis of the coast group rates or any others that would oblige them to shrink their present earnings or accept as a division less than they now earn on the traffic from Portland. The Chicago, Milwaukee & St. Paul also objects to the establishment of joint rates. The Northern Pacific and Great Northern have also demanded from the Southern Pacific joint rates on other commodities as a condition to the establishment of joint rates on forest products.

Coast group rates on lumber apply from points in the Willamette Valley to points on the Union Pacific Railroad in Wyoming, Colorado, and Nebraska, also to such points as Chicago, Ill., and New

York, N. Y. Joint rates on other commodities, such as hops, dried fruits, and canned goods, are maintained from Southern Pacific points in the Willamette Valley to certain points on the Northern Pacific, which rates are the same as from Portland and western Washington. Joint rates on forest products on the coast basis are maintained from points in the Willamette Valley on the Oregon Electric Railway to points on the northern lines to which a rate of 40 cents or greater applies from Portland and western Washington. An arbitrary of 5 cents over the Portland rate applies to points taking a less rate than 40 cents. The Oregon Electric extends from Portland to Eugene, and serves one or two of the mills operated by complainant's members. It is owned by the Spokane, Portland & Seattle Railway, which in turn is jointly owned by the Northern Pacific and Great Northern. The latter would prefer to cancel the joint rates with the Oregon Electric rather than have them considered a precedent for the establishment of similar rates with independent carriers. Some two or three points on the Oregon Electric from which joint rates now apply are common points with the Southern Pacific. It is pointed out that if Southern Pacific points are accorded the coast group basis of rates to 35-cent territory, their rates to such territory will be 5 cents less than from Oregon Electric points, because, as stated, joint rates from the latter are made by adding an arbitrary of 5 cents to the Portland rate; also that the application of the coast group basis of rates from Southern Pacific points in the Willamette Valley would make a less rate and charge than now applies from mills on the Southern Pacific Company's tracks in the city of Portland unless the northern lines should absorb the Southern Pacific Company's switching charge from the mill in Portland.

Complainant submitted numerous comparisons of the rates and earnings on forest products from points in the Willamette Valley on the Southern Pacific to points on the northern lines with the rates and earnings from points on the Columbia River and in western Washington to the same destinations. These comparisons disclose that the ton-mile earnings on the traffic from the Willamette Valley are invariably higher by from 10 to 25 per cent than on traffic from western Washington. Considering that the distance from the most northerly point in the Willamette Valley involved in the complaint to the nearest point in the 35-cent territory is over 600 miles and that the distances range from that on up to approximately 2,000 miles to St. Paul, there is no substantial difference in the average of distances from the Willamette Valley points involved in this complaint and from points on the Columbia River and in western Washington to the destinations involved.

Transportation conditions are no more difficult as regards traffic from the Willamette Valley than from Columbia River or western Washington points, as the haul to Portland is on a water grade. In *City of Astoria v. S., P. & S. Ry. Co.*, 38 I. C. C., 16, 21, which is referred to by complainant in argument, the Commission commented on the favorable operating conditions between Astoria, Oreg., and Spokane, Wash., as compared with the lines between Seattle, Wash., and Spokane.

The following table shows the distances, rates, and car-mile earnings under the present and proposed rates from Springfield, Oreg., a representative point in the Willamette Valley, to a representative point on the northern lines in each of the 35-cent, 40-cent, and 45-cent territories, as compared with the average car-mile earnings of those lines on all traffic:

From Springfield, Oreg., to—	Distance.	Present rates.	Proposed rates.	Earnings per car-mile under present rates.		Earnings per car-mile under proposed rates.		Railroad.	Average earnings per car- mile on all traffic.	Average length of haul on all traffic.
				Based on load of 58,000 pounds.	Based on load of 67,818 pounds.	Based on load of 58,000 pounds.	Based on load of 67,818 pounds.			
Billings, Mont.....	Miles. 1,119	Cts. 46	Cts. 35	Cents. 23.84	Cents. 27.88	Cents. 18.14	Cents. 21.21	Northern Pacific.....	Cents. 16.25	Miles. 293
Fargo, N. Dak.....	1,700	51	40	17.80	20.35	13.65	15.96	Great Northern.....	17.62	246
St. Paul, Minn.....	1,977	56	45	16.47	19.20	13.20	15.49	Chicago, Milwaukee & St. Paul.	13.15	248

The computation of car-mile earnings on forest products is based on the average loading, as shown by the record, of 58,000 pounds in Washington and Oregon and 67,818 pounds in the Willamette Valley. The car-mile earnings on forest products from the Willamette Valley under both the present and proposed rates are generally greater than the average car-mile earnings of the northern lines on all traffic, notwithstanding that the average haul from the Willamette Valley is much longer than the average hauls of the northern lines on all traffic.

There is at present little or no traffic in forest products from Willamette Valley points moving on the Portland combination to points on the northern lines, and the latter contend that whatever lumber might move from the Willamette Valley under the joint rates would displace an equal movement from mills located on the northern lines and thereby deprive them of the long haul. One of the reasons why the northern lines resist the establishment of joint through rates on the coast group basis is that they desire to conserve

the destination markets on their lines so far as possible to the shippers who originate traffic on their respective lines. The witness for the Chicago, Milwaukee & St. Paul frankly stated that his line objected to the establishment of joint rates from points in the Willamette Valley because of its obligation to mills on its own line, and its obligation to its stockholders.

The record discloses that while Oregon has about 58 per cent of the total stand of timber in Oregon and Washington, its lumber production is only 33 per cent of the total production of the two states, or about half that of Washington. Complainant attributes this difference to the limited markets to which Oregon has access under present rates. Complainant contends, and it is not denied by defendants, that it is impossible for its members to ship lumber to points on the northern lines under present rates or under any rates that are higher than those contemporaneously in effect from the Columbia River and western Washington.

The northern territory affords the best markets for the kind of lumber manufactured in the Willamette Valley. The same kinds of lumber, fir and hemlock, are manufactured along the Columbia River and in western Washington as in the Willamette Valley; the methods and cost of manufacture are substantially the same, and the two districts compete in common markets. The Willamette Valley has lower rates than mills in western Washington to certain territory in northern California, but most of the mills along the Columbia River and in western Washington have water transportation which enables them to reach a much wider range of markets than is open to the mills in the Willamette Valley.

Generally speaking, the coast group rates are regarded by the northern lines as terminal rates; that is, the rates from mills in the coast group on the northern lines apply only to points on the line originating the traffic; they are not applied from a local point on one of the northern lines to a local point on either of the other northern lines, except that the Northern Pacific has joint rates via western junctions to Chicago, Milwaukee & St. Paul local stations. It is contended that if complainant's petition were granted, shippers from points in the Willamette Valley would thereby gain an advantage over their competitors in the coast group, since the complainant's members would have joint rates to points on all the northern lines.

The Department of Agriculture in behalf of the Forest Service, which has much standing timber in Oregon, urges the establishment of the joint rates, contending that the Willamette Valley would thereby be enabled to furnish lumber for shipbuilding at such points as Duluth, Minn., and Superior, Wis. It is argued on behalf of the department, as well as by the complainant, that the granting to the

Willamette Valley of equal rates with western Washington to the destination territory here involved would result in greater development and increased prosperity for the state of Oregon.

McCHORD, *Commissioner*:

The above statement of facts was prepared by the examiner and served on the parties April 9, 1918. Exceptions were filed, and the case was set for argument on June 15, 1918. On June 5 the parties were notified that the argument had been cancelled. Later the case was again set for argument on October 3. On that date the parties appeared; argument was had; and the case was submitted.

Before discussing the exceptions to the report it is appropriate to state the reasons which prompted the Commission to postpone the argument in June. On December 26, 1917, the President issued a proclamation under which the federal government assumed generally control of the transportation systems of the country for war purposes on December 28, 1917. The President appointed a Director General of Railroads to administer the government control and to operate the railroads so as to effectuate the purpose for which they had been taken over by the government. On December 29, 1917, the Director General issued his General Order No. 1, in which, among other things, he said:

All transportation systems covered by said proclamation and order (President's proclamation and order taking over the railroads) shall be operated as a national system of transportation, the common and national needs being in all instances held paramount to any actual or supposed corporate advantage. All terminals, ports, locomotives, rolling stock, and other transportation facilities are to be fully utilized to carry out this purpose without regard to ownership.

On March 21, 1918, the Congress passed, and the President approved, an act, known as the federal control act, hereinafter called the control act, entitled "An act to provide for the operation of transportation systems while under federal control, for the just compensation of their owners, and for other purposes."

On May 25, 1918, the Director General of Railroads issued his General Order No. 28, supplemented June 12, in which, among other things, rates for transportation of freight were to be increased on June 25, approximately 25 per cent, and rates for transportation of lumber were to be increased 25 per cent, but not exceeding 5 cents per 100 pounds.

There was doubt in the minds of some of the Commissioners whether an order if issued by the Commission against carriers under federal control would be effective if the Director General was not a party to the proceeding. Arguments set in June which involved

rates which would be increased as the result of the Director General's General Order No. 28, were cancelled to give the Commission an opportunity to formulate new rules of practice, and to provide for making the Director General a party defendant in pending cases, should that be found advisable.

A public hearing was held by the Commission on July 24 in response to a notice previously issued reading in part as follows:

Must the justness and reasonableness of rates, fares, charges, classifications, regulations, and practices initiated by the Director General, under authority of the federal control act of March 21, 1918, be determined upon original complaints in new proceedings, or may such issues be properly raised by amendment to pending complaints wherein the rates, fares, charges, classifications, and practices of the carriers superseded by those initiated by the Director General are assailed.

At the hearing a representative of the Director General agreed that the Commission should put aside any technical or rigid construction of the law, and for the purpose of expediting cases and saving the parties unnecessary labor and expense, in each instance pass upon a motion to allow an amendment making the Director General a party defendant in such manner as in its discretion it may think proper. It was also stated by him that with respect to most cases in the hands of the Commission it would not be necessary to have further hearings. In other words, that no additional evidence would be needed except such as will bear upon the policy expressed in the control act and the reasons that led to the initiation of the rates and fares that became effective in June.

Accordingly, rules of practice were framed by the Commission and publicly announced. Complainants were advised that they might make application to amend their complaints on or before October 1, and notify the Commission whether it was their desire to submit additional evidence.

On August 16 the complainant herein tendered and the Commission permitted to be filed a supplemental complaint naming the Director General a party defendant and reciting the increases in rates that were established as the result of General Order No. 28. The Commission and the Director General were advised by complainant that it did not desire to submit additional evidence. It stated that it wished to argue the case before the Commission. The amendment to the complaint was allowed by the Commission.

On September 19 the answer of the Director General was filed. In it he states that:

He admits that since the filing of the original complaint herein there was made his General Order No. 28, and he avers it is therein by him found and certified to this Commission that in order to defray the expenses of federal control and operation fairly chargeable to railway operating expenses, and also to

pay railway tax accruals other than war taxes, net rents for joint facilities and equipment, and compensation to the carriers, operating as a unit, it was necessary to increase the railway operating revenue, also that in his opinion the public interest required a general advance in freight rates, passenger fares, and baggage charges, as therein provided; and he further avers that all rates as now in force and complained of herein have been established pursuant to and in accordance with said order.

Further answering respondent says that the alleged unlawfulness of the rates complained of herein is to be determined alone by the provisions of the federal control act, and he denies that said rates or any of them as now in force are in violation of the provisions of said act.

No request to take additional evidence was made on behalf of the Director General.

The arguments made by different representatives of the railroads and the Director General may be condensed into the following main contentions:

1. That the words "just and reasonable" used in the control act have meanings different from those applied to them in the act to regulate commerce.

2. That the evidence now in the case is irrelevant to the issues presented by the supplemental complaint and is insufficient for their determination.

3. That the rates initiated by the Director General in themselves, and in their relation to each other, are presumed to be right, and they can not be changed without an affirmative showing that they are wrong.

These contentions raise questions of the utmost importance with respect to the Commission's power to determine the issues presented on the record in this case.

Section 10 of the control act, among other things, provides:

That carriers while under federal control shall be subject to all laws and liabilities as common carriers, whether arising under state or federal laws or at common law, except in so far as may be inconsistent with the provisions of this act or any other act applicable to such federal control or with any order of the President. * * * That during the period of federal control, whenever in his opinion the public interest requires, the President may initiate rates, fares, charges, classifications, regulations, and practices by filing the same with the Interstate Commerce Commission, which said rates, fares, charges, classifications, regulations, and practices shall not be suspended by the Commission pending final determination.

Said rates, fares, charges, classifications, regulations, and practices shall be reasonable and just and shall take effect at such time and upon such notice as he may direct, but the Interstate Commerce Commission shall, upon complaint, enter upon a hearing concerning the justness and reasonableness of so much of any order of the President as establishes or changes any rate, fare, charge, classification, regulation, or practice of any carrier under federal control, and may consider all the facts and circumstances existing at the time of making the same. In determining any question concerning any such rates, fares,

charges, classifications, regulations, or practices, or changes therein, the Interstate Commerce Commission shall give due consideration to the fact that the transportation systems are being operated under a unified and coordinated national control and not in competition.

After full hearing the Commission may make such findings and orders as are authorized by the act to regulate commerce as amended, and said findings and orders shall be enforced as provided in said act: *Provided, however,* That when the President shall find, and certify to the Interstate Commerce Commission, that in order to defray the expenses of federal control and operation fairly chargeable to railway operating expenses, and also to pay railway tax accruals other than war taxes, net rents for joint facilities and equipment, and compensation to the carriers, operating as a unit, it is necessary to increase the railway operating revenues, the Interstate Commerce Commission in determining the justness and reasonableness of any rate, charge, classification, regulation, or practice shall take into consideration said finding and certificate by the President, together with such recommendations as he may make.

This law requires that the Commission in determining questions concerning rates initiated by the President shall take into consideration the fact that the defendant carriers are being operated as a unified and coordinated national system and not in competition; that the rates were initiated under a certificate of the President; and that consideration shall be given to that certificate and to any recommendation the President may make with respect to such rates. In other words, Congress intended that the Commission is not to interfere by any action it may take, or any order it may make, with the operation of the railroads of the country for purposes for which government control was assumed, or reduce rates initiated by the President without carefully weighing all the circumstances under which they were initiated and fully considering the reasons therefor and the purpose sought thereby.

The words "just and reasonable" as used in the control act obviously bear a similar or closely analogous meaning to that attaching to their use in the act to regulate commerce; in both cases they are to be construed in the light of all the circumstances and conditions; certainly they are not to be more narrowly construed. Rates made by the President must be reasonable in and of themselves and they must be relatively just in view of all the conditions enumerated in the control act and in view of other circumstances and conditions.

The second contention that the evidence already taken in this case is irrelevant and insufficient to support the issues raised in the supplemental complaint is untenable. It is to be remembered that the real issue in the case is now, and was when it was heard and first submitted, one of relationship. In his argument counsel for complainant stated that no complaint is made of the increase in the rates from Portland. The allegation is that the rate adjustment is unduly prejudicial to complainant's members in favor of

other shippers of lumber from north coast points. The complainant also asks for the establishment of joint rates. The rate situation was developed on the record, and its effect on shippers from the Willamette Valley was shown. On argument it was stated by a representative of the Director General that there had been no change in the situation so far as the physical movement of, and the rate adjustment applicable to, shipments by complainant's members to the territory involved are concerned, since the Director General assumed control of the principal defendants, except the increase in the rates.

Increased rates on forest products prescribed in General Order No. 28 have been published and are now in effect so as to make the situation of complainant's members more unfavorable than when the case was heard. The following table gives the rates, in cents per 100 pounds, from representative shipping points in the Willamette Valley to Portland before the increased rates were established and those in effect thereafter; and the distance, in miles, to Portland:

From—	Distance.	Rate June 24, 1918.	Present rate.
Sherwood.....	9	4	5
Newberg.....	28	5	6½
Silverton.....	46	6	7½
Salem.....	53	7	9
Cochran.....	65	7	9
Corvallis.....	80	9	11½
Eugene.....	124	11	14
Springfield.....	128	11	14
Wendling.....	145	12½	15½
Leona.....	159	13	16½

Rates from Portland to points in the territory involved on lines of the defendants were increased 5 cents per 100 pounds. Because of the rates initiated by the Director General, the alleged undue prejudice against complainant's members has been increased. What additional evidence need the complainant offer except the fact of the increase in the discrimination? That appears from the rates on file, and they are proper to be taken into account. Even if the old relationship had been maintained by an increase of 25 per cent in the through charges no new evidence is needed, nor could any well be submitted by complainant that would enable the Commission better to determine the questions at issue than the evidence now in the record. In simple justice to complainant it should not now be called upon to make further expenditures to show simply what the Commission already has before it.

When General Order No. 28 was issued by the Director General, he issued a public statement in which, among other things, he said:

The act of Congress provides that the reasonableness and justness of such rates may be dealt with by the Interstate Commerce Commission, so that no interests affected will be deprived of the opportunity for full hearing and consideration. The act of Congress provides that the Commission in passing upon these questions shall take into consideration the President's finding and certificate that in order to defray the expenses of federal control and operation it is necessary to increase the railway operating revenues. In this connection it is important to make clear that no part of the increase in rates now initiated is on account of the making of additions and betterments or the purchase of new equipment or other expenditures chargeable to investment account. The increases initiated are solely on account of increased burdens tending to diminish railway operating income.

In the nature of things no such far-reaching step can accomplish ideal equalization as between the numerous interests necessarily affected, and doubtless the Commission will find it proper to make readjustments to attain a nearer approach to such equalization. While as far as practicable the rates as initiated are designed to avoid unnecessary disturbance of relative rate bases, the Director General will cooperate heartily with the Commission in any readjustments needed to accomplish still further the object of avoiding undue preference, which nevertheless may develop upon detailed consideration by the Commission.

It is thus contemporaneously stated by the authority initiating the increased rates that the question of their reasonableness and justness might be dealt with by this Commission, and doubtless the Commission would find undue preferences in some rate adjustments which should and would be corrected. There is no authority in the control act for perpetuating during the period of federal control a rate adjustment that is unlawful under the act to regulate commerce.

If it should be shown to us that to grant the prayer of the complainant would interfere with the operation of the railroads as a unit, or would deprive the government of needed revenue to operate the railroads for war purposes, a different situation would be presented from that now under review. The facts with respect to such showing are with the Director General. It is not even suggested on the record that what the complainant seeks in this case, if granted, would in any manner interfere with the operation or maintenance of the defendant railroads under federal control for the purposes that dictated the assumption of their control by the federal government.

The evidence shows that the defendant, on the lines of which the traffic originates, had attempted for a number of years to secure an agreement from the northern lines to the establishment and maintenance of joint rates on lumber and forest products to points in the destination territory described in the report of the examiner, but was unable to do so. The reasons given by the northern lines for a refusal to enter into the arrangement were that they considered it their

duty to serve lumber mills on their own lines to the exclusion of mills on other and competing lines, and that they were unwilling to shrink their revenues below the Portland rates on traffic from connections.

It has long been well settled that no carrier has the right so to adjust rates on its own lines as unduly to prejudice shippers on other lines, or to deprive such shippers of reasonable and just rates, merely through a desire to serve shippers on its own lines. It is also a rule of well-nigh universal application that shippers may not be deprived of just through rates merely because carriers can not agree upon a division of joint rates.

On the face of this record, and under existing conditions, there appears to be no good reason why shippers of the complaining association should not have such relatively reasonable rates to points on defendants' lines as will insure them against undue prejudice as compared with their competitors. It does not appear that the establishment of the joint rates prayed for will in any way interfere with the operation of the federally-controlled defendants as a unit. Indeed, so far as appears from this record it will serve to effectuate the purpose of unified operation. Heretofore because of the rate adjustment complainant's shippers have practically been unable to make shipments to points east of Missoula, Mont., on the northern lines. In so far as a proper rate adjustment will permit them to make increased shipments there will be an addition to the total receipts of the railroads.

The third contention made on behalf of the defendants is that there is a presumption that the rates and relations of rates initiated by the Director General are just and reasonable and can not be changed with propriety except on affirmative evidence by the complainant to the contrary.

One obvious answer to this contention is that the Director General did not initiate the inequality in the rates which evoked the complaint. The increases initiated by him were superimposed on the then existing basis. That basis was initiated by the defendants and had been maintained by them for many years before federal control. At the hearing the complainant assumed the burden of showing that the rate adjustment was unreasonable and unjust. All the facts are now in the record with respect to that adjustment. It is inconceivable, in our opinion, that the Congress did a vain thing in conferring upon this Commission power to determine whether or not the rates initiated by the Director General are just and reasonable. The same force and effect must be given to that part of the law as to its other provisions. The simple fact is that if the rates were unlawful because unduly prejudicial when the evidence was submitted, the changes in rates since federal control have increased the prejudice.

We turn now to consider the exceptions to the examiner's report. The complainant and intervener do not except to the facts as stated. The defendant's exceptions relate to the failure of the examiner to include certain other facts which they assert are important to be considered. We have examined the record and find that the facts are substantially as stated by the examiner. The examiner proposed that the Commission under the facts as found by him should find as follows:

It is not established by the evidence that the rates complained of are unreasonable, but it does appear that under the present adjustment of rates from points in the Willamette Valley, Sherwood, Oreg., to Leona, Oreg., inclusive, to points on the northern lines taking rates of 35 cents or greater from Portland and other points in the coast group are unduly discriminatory and unduly prejudicial to the extent that the rates to points in the 35-cent territory on the northern lines exceed the rates from Portland to that territory by more than 5 cents per 100 pounds, and to the extent that the rates to points in the 40-cent and 45-cent territories exceed the rates from Portland to such territory by more than 2½ cents per 100 pounds. It is recommended that the defendants be required to establish joint through rates on the basis indicated.

To the suggested conclusion the defendants except on the ground that joint rates were suggested, and on a lower basis than the combination on Portland. The complainant excepts upon two main points, namely: First, that the examiner erred in not suggesting that the through charges on shipments of forest products from points in the Willamette Valley to points in the territory described are unreasonable; and, second, that the examiner erred in suggesting that there should be established higher joint rates from points in the Willamette Valley than rates contemporaneously maintained from Portland and other northcoast points to common destinations.

We are of the opinion that the first exception of the complainant is not well taken as to the reasonableness of the rates *per se*, but that the rates attacked are shown to be relatively unjust and unreasonable as compared with other Pacific coast points, as herein found.

With respect to the second exception of the complainant, from a consideration of the entire record, including the changes brought about by federal control and taking into account the provisions of the control act, together with the exceptions of the defendants, we find that the rates on lumber and forest products in carloads, from points in Oregon located on the main line and branch lines of the Southern Pacific Company south of Portland to and including Leona, to points on the lines of defendants in the states of Montana, Wyoming, North Dakota, South Dakota, Nebraska, Minnesota, Wisconsin, and Michigan, and the provinces of Manitoba and Saskatchewan, Canada, to which the present rates contemporaneously maintained from the coast group, including Portland, Oreg., are 40 cents per

100 pounds or greater, are and for the future will be relatively unjust and unreasonable and unduly prejudicial to the extent that they exceed the rates contemporaneously maintained from the coast group, including Portland, to the same destinations. We further find that joint rates should be established on the basis found lawful.

An order will be issued to carry out the findings herein made.

EX PARTE No. 64.
IN RE INCREASE IN EXPRESS RATES.

Submitted October 8, 1918, Decided October 22, 1918,

At his request, made under section 8 of the federal control act, certain data and recommendations regarding a proposed increase in express rates reported upon for the Director General of Railroads,

T. B. Harrison and *C. W. Stockton* for American Railway Express Company.

Charles E. Elmquist for state commissions of Washington, Iowa, Minnesota, and New York, second district.

J. H. Henderson for the Railroad Commission of Iowa.

Hance H. Cleland for Washington Public Service Commission.

John Graham for Public Utilities Commission of Idaho.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

In a communication to the Commission the Director General of Railroads inquires, in substance: (1) Whether, as represented by the American Railway Express Company, an increase of approximately \$23,679,000 in the company's gross express revenue would result from the following increases in express-rate scales: In zone 1, and between zone 1 and the other four zones, three scales on the first two classes and 10 cents per 100 pounds in commodity rates; and in and between the other four zones two scales on the first two classes and 10 cents per 100 pounds in commodity rates. (2) If the foregoing basis of scale increase under this method would not yield approximately the amount of revenue stated, what basis of scale increase under that method would yield the required amount? (3) If the amount of the revenue increase is correctly approximated, is the

method of procuring it proper? (4) If a different method of procuring the increase ought to be adopted, what should be the amount of the increase?

The estimate of \$23,679,000 is for both interstate and intrastate traffic, all but three of the states having adopted, substantially or wholly, the block system of stating express rates, and these three now having in course of preparation tariffs constructed on that plan. Of the amount stated \$11,780,303, or 49.75 per cent, would be retained by the express company, while the remaining \$11,898,697, or 50.25 per cent, under the existing contract between the express company and the Director General, would be paid to the Director General for express privileges. The sum which would be retained by the express company is said by the Director General to be required by the express company to meet wage increases that will have to be made in the near future, and that can not be provided for out of the present revenues, which already reveal an operating deficit, all of which is shown more in detail in the communication from the Director General, which appears in appendix 1 to this report. In view of the conditions outlined by the Director General, and by the express company in its communication to him, which is also shown in appendix 1, it is urged by the Director General that the matter should have prompt attention.

It was estimated by a witness for the express company upon the hearing that the operating deficit of the company for the month of July of this year, the accounts for which had not yet been closed, will be \$1,080,000, of which, however, \$750,000 will represent wage increases made effective July 1. The 10 per cent increase in express rates approved by us in *Proposed Increase in Express Rates*, 50 I. C. C., 385, and made effective, for the most part, on July 15 and July 25, has been entirely absorbed by the wage increases of July 1. Present calendar year statistics of the principal express companies, prepared by the Commission's bureau of statistics from the sworn statements of the carriers, show that these companies operated at deficits of \$1,637,757 in January, \$945,741 in February, \$813,074 in March, \$1,046,244 in April, and \$1,136,786 in May, a total for the five months of \$5,579,601. May is the last month for which the completed figures have been compiled.

Under an increase of three scales in zone 1, and between zone 1 and the other four zones, the increase on shipments classified first class will, in all cases, regardless of the length of haul, be 16 or 17 cents, and on shipments classified second class 12 or 13 cents, per 100 pounds, with proportionate increases on shipments of less than 100 pounds. Under the increase of two scales in and between the other four zones the increase in first-class rates will, in all cases,

regardless of the length of haul, be 11 cents, and in second-class rates, 7, 8, or 9 cents, per 100 pounds, with proportionate increases on shipments of less than 100 pounds.

In estimating the increase in gross revenue that will result from the proposed increase in rates the express company divides the estimated gross earnings for the year ending June 30, 1919, by the average earnings per pound for all express matter, to get the total number of pounds of express movement. It then computes the percentage of this total which moves in zone 1 and that which moves in all the other zones combined, and applies to the results the respective average proposed increases, adding together these two results for the final figure.

The estimate of \$252,000,000 gross revenue for the year ending June 30, 1919, compares not unfavorably with the known gross revenue of \$222,000,000 for 1917. It does not take into account the 10 per cent increase to which reference has been made, nor does it include the increase here proposed. It assumes that an increase of approximately 14 per cent in the gross revenues of April, May, and June, 1918, over the same months of the previous year, will be reflected in the year's business for 1919.

The 1.4 cents average revenue per pound, used in the analysis, is the result of a week's test, in April, 1917, of the entire movement of express by the American, Adams, Great Northern, Northern, Southern, Western, and Wells Fargo companies, and is incorporated in an exhibit, shown as appendix 2, prepared by these companies in connection with a railway mail pay inquiry, now on our docket.

These estimates are based on 63.1 per cent of the total movement of express for zone 1 and the 36.9 per cent for all the other zones combined. The percentages are taken from an analysis made some time ago by the Wells Fargo, American, Adams, and Southern companies, the details of which have not been presented to us, but which involved a check of the business done by the Wells Fargo for one day in each of four months, by the American one day in each of four other months, and by the Adams-Southern combined one day in each of the remaining four months.

The estimated average proposed increase of about 15 cents per 100 pounds in zone 1 and of about 10 cents per 100 pounds in all the other zones combined, on which the analysis is also based, represent the averages of the increases hereinbefore stated. They are not straight averages of those increases, however, but reflect the volume of traffic affected by each rate of increase.

The analysis of gross revenues has been carefully examined. Its basis seems to be reasonable, and assuming the estimates of traffic

to be correct, it must be accepted as closely approximating the amount of increased revenue that will result from the proposed revision of rates.

The estimated increase of \$23,679,000 in revenue under this analysis has been substantially corroborated by a subsequent estimate of the express company, based upon the analysis made in connection with the railway mail pay inquiry, already referred to. This estimate rests upon an entirely different period of time from that used in the other one, and includes a check of nearly five million shipments in all zones. It is shown as appendix 3. The difference between the two estimates is but \$27,900.

The suggested method of making the proposed increase was selected by the express company in preference to any other because of its greater simplicity and the economy of time it provides in the republication of tariffs, an important consideration in connection with the urgent need of the company for additional revenue; because of the ability under that method more accurately, economically, and promptly to estimate the revenue effect of the increase; and because of the desire of the express company to place the greater increase in the zone of greatest transportation costs. For the purpose of this inquiry the validity of the first two reasons may be accepted as established; the third is the more important and controlling.

It appears that in zone 1, where the heavier increase is proposed, there is the greatest percentage of short-haul traffic, on which, relatively, the terminal and other costs are greatest. It is shown that of the total weight of express traffic handled in zone 1 in April, 1917, 93 per cent was intrazone traffic, which includes the short hauls. As bearing generally on the relative cost of operation in this zone it is shown, for example, that the American Express Company assigned to zone 1 44 per cent of its total mileage, 67 per cent of its earnings, 87 per cent of its equipment, and 73 per cent of its employees; and that the Adams Express Company assigned to that zone 57 per cent of its total mileage, 77 per cent of its earnings, 92 per cent of its equipment, 82 per cent of its employees, and 88 per cent of its agency expense. The situation in zone 1 has become more acute in recent months by reason of the congestion of traffic, due to war conditions, which has greatly increased the cost of operation. It is therefore asserted that the greater basis of increase in zone 1 is justified on the basis of relative operating costs.

Another reason advanced by the express company for the greater increase in zone 1 than in other zones is the tendency it will have to restore a proper balance between express and freight rates in that zone, which has been disturbed in recent years by the greater increases in freight rates that have been granted in official classification terri-

tory than in other parts of the country. It is said that a result has been to transfer from the railroads to the express companies in zone 1 much of the short-haul traffic, which is the more expensive to handle.

It seems to be established that under the method of increase here proposed the greater increase in rate would be applied in the territory of lowest rates, of greatest cost of operation, and of greatest increase in those costs. The method would involve a departure from the original zone relationship established by us, but that departure seems, under the circumstances here presented, to be justified. As to the method of making the increase on the relative-zone basis suggested, it must be borne in mind that the proposal here made is an emergency measure and that the need for prompt action, stressed by the Director General in view of the deficit confronting the express company, to which reference has already been made, will not permit of the extended investigations necessary to the working out, experimentally, of other possible forms of increase. At the hearing but two other plans were suggested as preferable to that advanced by the express company: (1) A straight percentage increase, and (2) modification of the contract between the express company and the Director General, presently to be referred to. It is stated of record that under one plan thought of by the express company six months would be required to rework its tariffs. Here the tariff work is comparatively simple and will be rendered correspondingly simple in changing back to the lower basis if and when, as the express company hopes will come to pass in the not distant future, conditions will warrant taking off the increase. Contrasted with a straight percentage increase, even on a basis that would, like the proposed method, place the greater increase in the zone of greatest costs, it is preferable, in view of the nature of the demand now made upon the shipping public to meet a war emergency, to distribute the increase in the same amount to all shippers in the same zone, regardless of the length of haul, rather than to distribute it in varying amounts, according to the length of haul and the volume of rate.

It was strongly urged by counsel for state commissions at the hearing, and in telegrams received from about twenty of the state commissions since the hearing, that the desired increase in express revenue could, and more properly should, be procured by a modification of the express company's contract with the Director General reducing the percentage of gross express revenues paid to the Director General for express privileges from 50.25 to 45.25. In support of this suggestion it is said that, relatively, the approximately twelve millions of dollars now sought by the express company would constitute but an inconsiderable deduction from the recent increase in

freight revenues, while at the same time it would adequately meet the present needs of the express company for additional revenue. It is conceded by the express company that such a modification of the contract would yield approximately the required amount, and it would be acceptable to the express company if the needed revenue should be provided in that way.

We have no data upon which to base an opinion as to whether or not 45.25 per cent of the gross revenue from the express business would be remunerative for the service performed by the railroads. If it would be properly remunerative and the revenues from operation of the railroads will permit being drawn upon for the additional sum that would accrue to the express company under such a modification of the contract, it must be assumed that the burden of increased rates will not be laid upon the public. The suggestion merits careful consideration if the financial condition admits of the possibility of adopting it.

No question of needed additional revenue for the railroads has been presented or suggested here. It seems appropriate to point out that for the purpose of securing some twelve million dollars of needed additional revenue for the express company the proposed increased express rates will yield an additional total revenue of some twenty-four million dollars. Increasing the rates by one-half of the extent proposed would, if the entire revenue from the increase accrued to the express company, secure the additional revenue which it needs. Contracts between express companies and railroads have long provided, as does the one between the express company and the Director General, that the compensation of the railroad shall be a certain percentage of the gross revenue of the express company. It results from this that it is impossible to reduce the rates of the express company without taking money from the railroad company and impossible to increase the rates of the express company without giving additional revenue to the railroad company. This basis of compensation is certainly not scientific, and under it the express company does not pay the railroad company for the service which the railroad performs upon any demonstrably appropriate basis. The railroads have been and are compensated by the United States Government for transporting the mails on the basis of the weight carried or of the space occupied in the cars or trains. A similar basis of charges by the railroad company to the express company would, we think, be preferable to the basis now and heretofore employed, and would obviate the embarrassments and inequities to which we have referred as growing out of the past and present basis of contract. The question of a different basis of compensation from the express company to the railroads is well worthy of study.

As a result of the recent 10 per cent increase in express rates the rate on fresh fruits and vegetables, in carloads, from Seattle, Wash., to Chicago has been increased from \$2.50 to \$2.75, and on fresh fish from \$2.75 to \$3.02, per 100 pounds. The rate from Seattle to New York, on fresh fruits and vegetables, and on fresh fish, in carloads, has been increased from \$3 to \$3.30 per 100 pounds. A formal complaint was filed against these increased rates and the evidence has been presented, but the case has not yet been submitted. *Public Service Commission of Washington v. Express Co.* A protest against further increase in the carload express rates proposed in this proceeding has been filed on behalf of the shippers of fresh fruits and vegetables.

All things considered, we conclude that unless the suggestion to provide the needed revenue for the express company through a modification of its contract with the Director General, or the suggestion to increase the rates by one-half the amount proposed and permit all the revenue therefrom to accrue to the express company, is adopted, the allocation of the increase proposed by the express company is proper and is preferable to any other method that has been suggested.

No view as to jurisdiction of the initiation of the proposed rates has been requested or considered, and no opinion on that point is expressed.

51 I. C. C.

APPENDIXES.

APPENDIX I.

DIRECTOR GENERAL'S MEMORANDUM.

SEPTEMBER 13, 1918.

INTERSTATE COMMERCE COMMISSION,

Washington, D. C.

GENTLEMEN: The amount realized from the advances in express rates recently allowed by you, approximately \$10,000,000, has been entirely absorbed by the American Railway Express Company in making advances in the wages of its employees. I am satisfied that those wages must be still further advanced and that approximately \$12,000,000 of additional revenue must be had for that purpose. I have applied to the express company for a suggestion as to what advances should be made in the present express rates to yield that additional income and have received from that company the memorandum attached.

Acting under section 8 of the Federal Control Act I request you to advise me:

1. Whether in your opinion, assuming that approximately \$12,000,000 of express revenue must be raised, the method of advance suggested by the express company is a proper one? If in your opinion it is not, will you kindly state what method should be followed.

2. If in your opinion the method suggested by the express company is proper, will the amount of advance proposed by it yield the sum required; namely, approximately \$12,000,000? If not, what advance under that method will be required to produce that result? If you believe that some different method should be adopted, please indicate the amount of the advance which should be made.

At the present time the express business is being conducted at a deficit which will be largely increased by the advances in wages which must be made. This deficit is borne by the Railroad Administration. You will therefore appreciate the importance of as speedy action as may be consistent with a proper consideration of the questions submitted.

Cordially, yours,

(Signed) W. G. McAdoo.

MEMORANDUM OF AMERICAN RAILWAY EXPRESS COMPANY SUGGESTING METHOD OF
ADVANCING EXPRESS RATES.

It is suggested that the rates in zone 1, both intra and interzone be increased three scales—that is to say, that the minimum rate of 55 cents be increased to 71 cents, and each rate above that increased accordingly, and further that 10 cents per 100 pounds be added to the commodity rates. This will make an increase of first class as a maximum, of 16 cents or 17 cents per 100 pounds; on second class 12 cents, and on commodities 10 cents; with proportionate increases on shipments of less than 100 pounds; that the rates both intra and interzone in all other zones be increased by advancing two scales and adding 10 cents per 100 pounds to commodity rates. This will result in a maximum increase on first class of 10 cents or 12 cents, second class 8 cents and commodities 10 cents per 100 pounds, with a proportionate increase on shipments of less than 100 pounds. It is estimated that this will produce on zone 1 business \$17,037,000 and on all other business \$6,642,300, or a total of \$23,679,000, of which the express company will get \$11,780,303, the balance, \$11,898,697, going to the Director General in increased express privileges.

In view of the urgent need of immediate relief, and the necessity without further delay of increasing the wages paid to its employees, the increased revenue should be available at once, and the advance in rates made effective at the earliest possible moment.

51 I. C. C.

APPENDIX 2.

STATEMENT SHOWING ANALYSIS OF EXPRESS MATTER CARRIED BY ALL EXPRESS COMPANIES FOR THE MONTH OF APRIL, 1917.

[Revenue as shown is on basis of charges as made to public.]

American, Adams, Great Northern, Northern, Southern, Western, and Wells Fargo Express Companies.

Classification.	Number of trans- actions.	Weight.		Pound-miles.	Ton-miles.	Revenue.	Reve- nue per ton-mile.	Pay- ments to rail- roads per ton-mile.	Aver- age dis- tance hauled per ton.	Average weight per ship- ment.	Aver- age reve- nue per ship- ment.	Aver- age reve- nue per pound.
		Pounds.	Tons.									
Group 1. First class or higher, l. c. l.	14, 700, 202	603, 895, 810	301, 948	235, 285, 996, 000	117, 642, 998	\$11, 937, 032. 92	10. 15	5. 16	389. 61	41. 08	\$0. 8120	1. 98
Group 2. Second class, l. c. l.	3, 014, 461	305, 168, 806	152, 584	57, 544, 570, 000	28, 772, 285	2, 604, 377. 27	9. 05	4. 60	188. 57	101. 23	. 8640	. 85
Group 4. All other freight, food and drink, l. c. l.	1, 884, 431	249, 702, 408	124, 851	53, 276, 662, 000	26, 638, 331	1, 743, 694. 99	6. 55	3. 33	213. 36	132. 51	. 9253	. 70
Group 5. All other freight other than food and drink, l. c. l.	1, 474, 729	72, 845, 324	36, 423	10, 352, 908, 000	5, 176, 454	640, 331. 35	12. 37	6. 29	142. 12	49. 40	. 4342	. 88
Total, l. c. l.	21, 073, 823	1, 231, 612, 348	615, 806	356, 460, 136, 000	178, 230, 068	16, 925, 436. 53	9. 50	4. 83	289. 43	58. 44	. 8031	1. 37
Group 6. First class, c. l.	1, 917	29, 947, 615	14, 974	18, 364, 792, 000	9, 182, 396	590, 309. 36	6. 43	3. 27	613. 15	15, 614. 16	307. 7770	1. 97
Group 7. Second class, c. l.	64	1, 047, 476	524	905, 750, 000	452, 875	20, 565. 79	4. 54	2. 31	866. 46	16, 462. 07	323. 2107	1. 96
Group 8. All other freight, food and drink, c. l.	1, 000	18, 822, 365	9, 411	27, 716, 866, 000	13, 858, 433	333, 339. 95	2. 41	1. 22	1, 473. 03	18, 824. 38	333. 3756	1. 77
Group 9. All other freight other than food and drink, c. l.	41	531, 921	266	1, 133, 362, 000	566, 681	25, 316. 37	4. 47	2. 27	2, 113. 27	13, 003. 89	618. 9100	4. 76
Total, c. l.	3, 022	50, 349, 377	25, 175	48, 120, 770, 000	24, 060, 385	969, 531. 47	4. 03	2. 05	955. 74	16, 658. 71	320. 7814	1. 93
Grand total, c. l. and l. c. l.	21, 076, 845	1, 281, 961, 725	640, 981	404, 580, 906, 000	202, 280, 453	17, 894, 968. 00	8. 85	4. 50	315. 59	60. 82	. 8490	1. 40
Total of groups Nos. 2, 4, 7, and 8 (food and drink)	4, 899, 956	574, 741, 055	287, 370	139, 443, 848, 000	69, 721, 924	4, 701, 978. 00	6. 74	3. 43	242. 63	117. 80	. 9596	. 89
Group 3. Money ¹	115, 155	.....	.....	.....	.....	171, 956. 33	.....	.....	.....	.....	.....	.....

¹ Totals of group 3 not used in figuring averages shown.

APPENDIX 3.

AMERICAN RAILWAY EXPRESS CO.

Statement showing effect of proposed increase in rates on basis of distribution of 18,000,000,000 pounds to zones and classes on basis of analysis of traffic for six selected days in April, 1917.

Zones.	Weight.	Per cent.	Estimated weight.	Proposed increases in rates per 100 pounds.	Total estimated increase per annum.
	<i>Pounds.</i>		<i>Pounds.</i>	<i>Cents.</i>	
Local zone 1, and interzone 1:					
1. First-class merchandise.....	123,304,996	43.7	7,866,000,000	16.5	\$12,978,900
2. Second-class merchandise.....	45,173,205	16.0	2,880,000,000	12.5	3,600,000
3. All other classes.....	19,682,721	7.0	1,260,000,000	10.0	1,260,000
Total affecting zone 1.....	188,160,928	66.7	12,006,000,000	.....	17,838,900
All other zones, local and interzone: ¹					
1. First-class merchandise.....	16,155,413	5.7	1,026,000,000	11.0	1,128,600
2. Second-class merchandise.....	22,201,553	7.9	1,422,000,000	8.0	1,137,600
3. All other classes.....	55,543,728	19.7	3,546,000,000	10.0	3,546,000
Total, all other zones.....	93,900,694	33.3	5,994,000,000	.....	5,812,200
Total, all zones:					
1. First-class merchandise.....	139,460,409	49.4	7,892,000,000	.....	14,107,500
2. Second-class merchandise.....	67,374,758	23.9	4,302,000,000	.....	4,737,600
3. All other classes.....	75,226,455	26.7	4,806,000,000	.....	4,806,000
Grand total.....	282,061,622	100.0	18,000,000,000	.....	23,651,100

¹ Excluding interzone with zone 1.

Estimate of total business during year ending June 30, 1919.

Estimated gross earnings per year ending June 30, 1919, exclusive of recent 10 per cent increase.....	\$252,000,000
Average revenue per pound based on analysis of business of April, 1917.....cents..	1.4
Total estimated number of pounds to be handled during year ending June 30, 1919.....	18,000,000,000
	51 I. C. C.

No. 10122.

STANDARD TIME ZONE INVESTIGATION.

Submitted October 1, 1918. Decided October 24, 1918.

Limits of Eastern, Central, Mountain, and Pacific standard time zones defined, as required by an act of Congress entitled "An act to save daylight and to provide standard time for the United States," approved March 19, 1918.

H. C. Storey, W. K. Etter, W. T. Quirk, F. E. Summers, and F. M. Bisbee for Atchison, Topeka & Santa Fe Railway Company; Santa Fe, Prescott & Phoenix Railway Company; and Panhandle & Santa Fe Railway Company; *E. B. Rock, jr.*, for Atlanta, Birmingham & Atlantic Railroad Company; *E. R. Wooten, J. C. Murchison*, and *R. A. McCranie* for Atlantic Coast Line Railroad Company; *Charles Selden* for Baltimore & Ohio Railroad Company; and *C. O'D. Pascault* for Buffalo, Rochester & Pittsburgh Railway Company.

L. H. Phetteplace for Carolina, Clinchfield & Ohio Railway; *T. R. Jones* for Central of Georgia Railway Company; *E. S. McNeill* for Charleston & Western Carolina Railway Company; *E. W. Grice* for Chesapeake & Ohio Railway Company and Hocking Valley Railway Company; *C. T. Dike* and *Frank Walters* for Chicago & North Western Railway Company, and Pierre, Rapid City & North Western Railway Company; *G. W. Holdredge, Byron Clark*, and *J. T. McShane* for Chicago, Burlington & Quincy Railroad Company; *J. F. Richards* for Chicago, Milwaukee & St. Paul Railway Company; and *C. H. Hubbell* for Chicago, Rock Island & Pacific Railway Company, and Chicago, Rock Island & Gulf Railway Company.

F. W. Milton for Cleveland & Buffalo Transit Company; *L. U. Morris* for El Paso & Southwestern Company; *F. J. Moser* for Erie Railroad Company; *J. H. Owen* for Florida East Coast Railway Company; *John B. Munson* for Georgia Southern & Florida Railway Company; Jacksonville Terminal Company; and St. John River Terminal Company; *H. Hulatt* for Grand Trunk Railway system; *W. E. Berner* and *W. R. Smith* for Great Northern Railway Company; *F. C. Coleman* for Gulf, Colorado & Santa Fe Railway Company; and *W. H. Smith* for Los Angeles & Salt Lake Railroad Company.

A. B. Bayless for Louisville & Nashville Railroad Company; *S. W. Derrick* for Minneapolis, St. Paul & Sault Ste. Marie Railway Company; *F. W. Taylor* and *E. E. Hanna* for Missouri, Kansas &

Texas Railway Company; *William C. Swartout*, *J. R. Lighty*, and *D. O. Oulette* for Missouri Pacific Railroad Company; *J. L. Wilkes* for Nashville, Chattanooga & St. Louis Railway; *C. A. Gallagher* for Newburgh & South Shore Railway Company; *D. C. Moon* for New York Central Lines; *J. J. Bernet* for New York, Chicago & St. Louis Railroad Company; and *D. E. Spangler* for Norfolk & Western Railway Company.

C. L. Nichols, *W. E. Berner*, and *T. F. Lowry* for Northern Pacific Railway Company; *J. L. Priest* for Oregon Short Line Railroad Company and Oregon-Washington Railroad & Navigation Company; *D. F. Crawford* and *George LeBoutillier* for Pennsylvania Company; *J. E. Burrell* for Pennsylvania Railroad Company; *George H. Schleyer* for St. Louis-San Francisco Railway Company; and *H. W. Purvis* for Seaboard Air Line Railway Company.

A. C. Emerson for Southern Pacific Company; *J. J. McClassin* for Southern Pacific Railroad Company; *W. L. Williamson* for Southern Railway Company; *R. M. Seale* for Texas & Pacific Railway Company and *J. L. Lancaster* and *Pearl Wight*, receivers; *F. H. Hammill* for Union Pacific Railroad Company and St. Joseph & Grand Island Railway Company; *S. E. Cotter* for Wabash Railway Company; *H. W. Foreman* for Western Pacific Railroad Company; and *H. W. McMaster* for Wheeling & Lake Erie Railway Company.

B. McKeen for time committee of American Railway Association; and *W. C. McGowan* for United States Shipping Board.

J. L. Cleary for city of Grand Island, Nebr.; *William Madgett* for city of Hastings, Nebr.; *Robert Krakauer* for city of El Paso, Tex.; *George T. McIntosh*, *E. N. Fairchild*, and *Clifford Gildersleeve* for Cleveland Chamber of Commerce; *O. C. Cole* and *A. W. Reeves* for El Paso Chamber of Commerce; and *John D. Baker*, *B. R. Kessler*, *W. F. Coachman*, *F. C. Groover*, *John Ball*, and *Telfair Stockton* for Jacksonville Chamber of Commerce.

Leroy M. Gibbs for Oklahoma City Chamber of Commerce; *George L. Renaud* and *Walter Brooks* for More Daylight Club of Detroit, Mich., and Board of Commerce of Detroit; *G. B. Weir* for citizens on Chicago, Burlington & Quincy Railroad west of Curtis, Nebr., to Sterling, Colo.; *John A. Futch* for Florida State Furniture Dealers' Association; *A. G. Mickle* for Swift & Company; and *Emerson W. Judd* in person.

REPORT OF THE COMMISSION.

AITCHISON, Commissioner:

By sections 1 and 2 of the act of Congress approved March 19, 1918, entitled "An act to save daylight and to provide standard time for the United States," it is provided:

That for the purpose of establishing the standard time of the United States the territory of continental United States shall be divided into five zones in the manner hereinafter provided. The standard time of the first zone shall be based on the mean astronomical time of the seventy-fifth degree of longitude west from Greenwich; that of the second zone on the ninetieth degree; that of the third zone on the one hundred and fifth degree; that of the fourth zone on the one hundred and twentieth degree; and that of the fifth zone, which shall include only Alaska, on the one hundred and fiftieth degree. That the limits of each zone shall be defined by an order of the Interstate Commerce Commission, having regard for the convenience of commerce and the existing junction points and division points of common carriers engaged in commerce between the several States and with foreign nations, and such order may be modified from time to time.

SEC. 2. That within the respective zones created under the authority hereof the standard time of the zone shall govern the movement of all common carriers engaged in commerce between the several States or between a State and any of the Territories of the United States or between a State or the Territory of Alaska and any of the insular possessions of the United States or any foreign country. In all statutes, orders, rules, and regulations relating to the time of performance of any act by any officer or department of the United States, whether in the legislative, executive, or judicial branches of the Government, or relating to the time within which any rights shall accrue or determine, or within which any act shall or shall not be performed by any person subject to the jurisdiction of the United States, it shall be understood and intended that the time shall be the United States standard time of the zone within which the act is to be performed.

The act also provides that in each year and as to each zone at 2 o'clock antemeridian of the last Sunday of March the standard time shall be advanced one hour, and at 2 o'clock antemeridian of the last Sunday in October the standard time shall, by the retarding of one hour, be returned to the mean astronomical time of the degree of longitude governing said zone. No penalty is provided for a violation of the act.

But 11 days intervened between the approval of the daylight-saving act and the last Sunday in March of the current year, when the standard time in each of the zones fixed was required to be advanced one hour. Such survey of the subject as the Commission was enabled to make within the limited time at its disposal sufficed to show clearly that it was wholly impracticable and, in fact, even hazardous to public safety to make any readjustment of the existing time zones before the initial date for the advancing of time. On March 28, 1918, the Commission adopted an interim order which, by its terms, was to continue until the further order of the Commission. The daylight-saving act designated the standard time of the five time zones required by it as "United States standard Eastern, Central, Mountain, Pacific, and Alaska time," respectively. The Commission's interim order in effect fixed the limits of the first-named four zones as those within which, as to each common carrier, locality,

body politic, public authority, or person, natural or artificial, subject to the act and affected thereby, the times known as Eastern time, Central time, Mountain time, and Pacific time were observed and used, respectively, in the same manner and to the same extent as then observed and used by each of such designated classes of persons and corporations, public and private. No order of the Commission as to the fifth zone, which includes the territory of Alaska, is now under contemplation by the Commission.

In effect, therefore, the limits of the various zones were so fixed by the act as supplemented by the Commission's interim order that the time observed or used by every common carrier, locality, body politic, public authority or person, natural or artificial, within continental United States, excluding Alaska, should be advanced one hour at the designated instant on the last Sunday of March, and retarded again at 2 a. m. on the last Sunday in October. This order was served upon all carriers engaged in interstate commerce. It was successfully put into operation by them at the appointed hour March 31, 1918, apparently without any confusion or accident.

A preliminary investigation by the Commission disclosed an incongruous situation as to the limits of the existing time zones. The Commission was unable with the information before it to arrive at a proper basis for defining the limits of each of the first four zones. The existing zones, so far as the term "zones" can be applied to areas interlaced by railroad lines, are so irregular as to preclude an attempt to define them even approximately. The meridian lines have been ignored as boundaries. Railroads and localities in many instances employ different bases of time. In many cases railroads in the same locality use different time standards. It was apparent that the information necessary to an intelligent determination of the matter could be obtained only by a comprehensive investigation of the entire situation. It was therefore ordered that this investigation be instituted in order to determine and define the proper limits of the first, second, third, and fourth zones created by the day-light-saving act.

As a preliminary inquiry questionnaires were addressed to all class 1 and class 2 railroads and to practically all municipalities that might be affected by any change in the time zones, requesting full and detailed information respecting the standard time observed by them. The replies to these questionnaires are a part of the record in this proceeding. Notices of the proceeding and as to hearings to be held were seasonably given to all the common carriers in the United States subject to the act to regulate commerce, the governors, attorneys general, and railroad commissions of all the states, municipalities which it was thought might be affected by any change

in the time standards, and many individuals who had shown an interest in the matter. Public hearings were held at Atlanta, Ga., Jacksonville, Fla., Pittsburgh, Pa., Cleveland, Ohio, Bismarck, N. Dak., Helena, Mont., Salt Lake City, Utah, Hastings, Nebr., Oklahoma City, Okla., and El Paso, Tex. At the hearings representatives of practically all of the principal railroads of the country and many other persons in their own behalf or as delegates from or representatives of governmental, commercial, or civic organizations appeared and were heard fully.

At the request of the Commission the Secretary of the Navy designated an assistant astronomer of the United States Naval Observatory, who attended the hearings and gave such technical advice to the Commission and the parties as was called for.

By supplemental order made with the consent of interested parties that portion of the line of the Chicago, Burlington & Quincy Railroad extending from Curtis, Nebr., to Sterling, Colo., was included within the Mountain zone. This supplemental order became effective at 2 o'clock on the morning of June 29, 1918.

In the order instituting the investigation the Commission stated its purpose to indicate tentatively the limits proposed to be defined for each of the four zones in the United States proper. Accordingly at each hearing a tentative zone limit was announced for the section of the country in which the hearing was being held and which afforded a basis for the testimony taken.

Upon the whole record a draft of a proposed report was issued by the Commission, which defined tentatively the limits of the first, second, third, and fourth zones. That report was given wide publicity, and a copy was furnished to each of the railroads, and other parties appearing upon the hearings, and also to the Director General of Railroads, the regional directors of the United States Railroad Administration, the governors of the states, and to the mayors of more than 250 cities which were thought to be affected by the changes in zone limits proposed. All concerned were given opportunity to file exceptions with the Commission; any parties who did not desire to be heard on oral argument were invited to direct the Commission's attention to any matters in which they might be interested by letter. No exceptions were taken to the proposed report, except on behalf of the Atlanta, Birmingham & Atlantic Railway Company; the Kansas City, Mexico & Orient Railroad Company; and the Minneapolis, St. Paul & Ste. St. Marie Railway Company. No railroad or other party asked to be heard in oral argument. Certain informal suggestions made by the Director General of Railroads subsequent to the submission have been given consideration.

Standard time has been defined as time based upon a certain definite meridian that is adopted by law or usage as the time meridian for a more or less wide extent of country, in place of the various meridians upon which local mean time is based. Its advantage is that neighboring communities or places keep exactly the same time, instead of differing by a few minutes or seconds according to their difference of longitude, a matter of especial importance in connection with the operation of railroads and telegraphs, or the transaction of any business wherein contracts involve any definite time limits.

Prior to 1883 there was no established standard of time for the United States, and mean sun time was usually observed by the various localities and municipalities. In 1883 the four present standards of time were adopted in the United States on the initiative of the American Railway Association, and at noon of November 18 of that year the telegraphic time signals sent out daily from the Naval Observatory at Washington, D. C., were changed to the new standard, according to which the meridians of the 75th, 90th, 105th, and 120th degrees west of Greenwich became the time meridians of Eastern, Central, Mountain, and Pacific standard time zones, respectively. Those meridians are, under the daylight-saving act, to continue to govern the first four zones prescribed therein.

Since 1883 several states and many municipalities have adopted the time of one of the standard time meridians as their legal time. It appears that by law the Eastern time standard has been adopted in Connecticut, the District of Columbia, Maine, Maryland, New Jersey, New York, and West Virginia; the Central time standard in Alabama, Florida, Michigan, Minnesota, Missouri, Ohio, and Wisconsin; and the Mountain time standard in Wyoming. Many municipalities have, from time to time, adopted various time standards; some of which have varied from the standard fixed by the statutes of the state. In fact, it is clearly shown by the record that public sentiment and habits have been more potent factors in fixing the time standards for localities than have state statutes; and that the usages of carriers, taken without regard to local statutes or ordinances, have been and must be largely controlling in determining the time to be observed locally.

The standard time zones of the United States were originally fixed by railroads for railroad operating purposes. Naturally and necessarily the time-breaking points were fixed at terminals or division points. An ideal arrangement of zones, if the minimum deviation from local mean time were the sole consideration, would fix the breaking points along a north-and-south meridian halfway between

the fixed standard meridians. These median meridians are as follows: Between the Eastern and Central zones, $82^{\circ} 30'$; between Central and Mountain zones, $97^{\circ} 30'$; and between the Mountain and Pacific zones, $112^{\circ} 30'$, west of Greenwich. However, ideal conditions did not obtain, and the practical convenience of the carriers determined time-breaking points. In 1883 the lines of many of the principal carriers operating in the eastern section of the United States terminated in Ohio, western New York, or Pennsylvania, or at the Ohio River, and the western termini of these carriers were in closer proximity to the $82^{\circ} 30'$ meridian than the then existing termini of the carriers operating between the Central and Mountain zones or the Mountain and Pacific zones were to the $97^{\circ} 30'$ and $112^{\circ} 30'$ meridians, respectively. It also appears that the operating divisions of eastern carriers are somewhat shorter than those of western carriers, which extend through more sparsely settled sections. From time to time these time-breaking points have been changed as operating divisions have been readjusted or as lines have been extended. The general trend of railroad building westward has almost continuously pushed the zone boundaries far west of the median meridians. Occasionally there has been an attempted rectification as new operating division terminals have been created. Sometimes there has been a rectification upon one line, while there has been none upon a parallel east-and-west line but a few miles distant. Division terminals of one carrier have not been located either with reference to the median meridians or with reference to the terminals or time-breaking points of other near-by railroads. As branch lines have been constructed, the carriers have extended thereto the standard time observed at the junction point or upon the main line. There are instances where branch lines radiate from the main line at points near the time-changing points just within the normal limits of a time zone and extend many miles beyond the time-changing point, and as the time observed at the junction point is also observed at all points on the branch line the time of one zone is extended within the normal limits of another time zone.

A confused situation has been the result. Thus, in northwestern Pennsylvania, where the lines of the Pennsylvania and New York Central interlace and in many instances serve the same communities, notwithstanding a state statute prescribes the use of Eastern standard time, and the Pennsylvania employs that standard, the New York Central lines are governed by Central time. The New York Central lines carry Central time as far east as Buffalo, N. Y.; the Erie carries Eastern time as far west as Dayton, Ohio. Over certain jointly operated lines, two standards of time are employed.

Central time is employed by the Southern Pacific lines and the Texas & Pacific Railway as far west as El Paso, Tex. Between Buffalo and El Paso, into both of which run carriers using Central time, intervene $27^{\circ} 36'$ of longitude, equivalent to 1 hour and 50 minutes of time; El Paso is, in fact, west of the standard time meridian for the Mountain zone.

The table below shows the points at which the more important lines of railroad now change from one standard of time to another, with their longitude and the interval of time fast or slow of the time of the median meridian.

Points at which time changes.

BETWEEN EASTERN AND CENTRAL STANDARD TIME ZONES.

BETWEEN CENTRAL AND MOUNTAIN STANDARD TIME ZONES.

Points at which time changes—Continued.

BETWEEN MOUNTAIN AND PACIFIC STANDARD TIME ZONES.

Time-breaking points.	Railroads.	Longitude. west of Greenwich.	Minutes of time east or west of normal time breaking line.	Minutes by which lo- cal mean time differs from standard time.
		° ' ''		
Troy, Mont.....	Great Northern.....	115 54	13½, W....	43½ slow of Mountain.
Paradise, Mont.....	Northern Pacific.....	114 47	9, W.....	39 slow of Mountain.
Huntington, Oreg.....	Oregon Short Line-O. W., R. & N.	117 16	19, W.....	49 slow of Mountain.
Avery, Idaho.....	C., M. & St. P.....	115 48	13, W.....	4 slow of Mountain.
Ogden, Utah.....	Union Pacific; So. Pac.....	111 59	2, E.....	33 fast of Pacific.
Salt Lake City, Utah.....	D. & R. G.; West. Pac....	111 31	2½, E.....	32½ fast of Pacific.
Caliente, Nev.....	S. P., L. A. & Salt Lake..	114 31	8, W.....	38 slow of Mountain.
Seligman, Ariz.....	A., T. & S. F.....	112 50	1½, W.....	31½ slow of Mountain.
Parker, Ariz.....	.....do.....	114 17	7, W.....	37 slow of Mountain.
Yuma, Ariz.....	Southern Pacific.....	114 37	8½, W.....	38½ slow of Mountain.

It will be seen that the time-changing points between the Eastern and Central standard time zones conform to the median meridian more closely than do the time-changing points between the Central and Mountain, and between the Mountain and Pacific standard time zones.

For many reasons the action of the railroads in fixing time-breaking points has been, and is, practically determinative of the standard of time employed in all affairs of life in all communities along their lines. The chief problem now before the Commission is the adjustment of the time-breaking points of the railroads engaged in interstate commerce. With those adjusted with reference both to the needs of successful rail operation and the convenience of commerce in a broad way, the basis of local time largely takes care of itself. It is generally far less inconvenient for communities to adjust their time standards and habits to railroad time than to endure the continual annoyances which attend upon the use of one standard for local purposes and another for transportation. In consequence of this relationship the convenience of railroad operators has in many cases dictated the standards of time for large sections of the country, regardless of the sun, or of the effect upon the industrial or social life of the community served.

It appears clearly from the record that there is need for a closer connection between the sun and the clock than has obtained in many parts of the country; that there is a relationship between habits and employments and the hours of the day as expressed by timepieces which can not be impaired without great inconvenience; and that public health and prosperity will best be subserved when normal standards of time are observed in every locality where they can be made applicable. The statement finds support in the record that

in some sections the continued use by carriers of inappropriate time standards is even inimical to the maximum production output essential to the national defense.

The carriers generally ask that the present time-changing points on their lines be not disturbed, for the reason that with a few unimportant exceptions they are well-established division points of both passenger and freight trains, as well as the termini of dispatching districts, and because it is conceded impracticable to break time exactly upon a median meridian. It is the practically unanimous view of the carriers that time should be changed only at points at the termini of train-dispatching districts where train crews are relieved. They claim it is hazardous to require train crews to change from one standard operating time to another during a trick of duty and impracticable to have train dispatchers operate trains under two different standards of time. Many of the carriers contend that entire transportation divisions should be operated on but one standard of time, so that employees usually working under one standard of time will not be required upon short notice to operate trains under another standard of time. However desirable these operating conditions may be, there are well-recognized instances of wholly successful operation in which one or more of these favorable conditions are absent, and time is made to break within the run of crews or within the jurisdiction of a dispatcher. Again, freight crews are much more numerous than passenger crews, and their runs are generally shorter. There are many freight terminals which can be used as time-breaking points, which do not happen also to be terminals for passenger crews. The main obstacle to a harmonious adjustment of time-breaking points is found, on analysis of a number of cases, to be reluctance to readjust the runs of a certain small number of passenger crews or to divide dispatching districts.

The Commission has given careful consideration to the existing junction points and division points of common carriers engaged in interstate or international commerce. The existing status as to each particular time-breaking point, present and proposed, has been given attention, with the thought that it is not lightly to be disturbed. On the other hand, the inertia of things as they are should not deprive any portion of the country of the benefits of a well-adjusted time standard; and comparatively slight added cost or inconvenience to a few should not interfere with the well-being of the general public, who in the long run meet the expenses of railroad operation.

Certain principles seem well established. Congress evinced the dual purpose to save daylight and to establish a standard time system for continental United States. This Commission is to effectuate these

Congressional purposes as expressed in the remedial legislation enacted under the stress of a national emergency. We take the direction to have regard to the convenience of commerce in its broadest sense, and as requiring such an adjustment as will most greatly facilitate the vital national interests which Congress attempted to aid. While we have due regard to the existing junction and division points of common carriers, this does not mean that the present location of such junctions and divisions is necessarily to be of compelling force in our determination.

As far as possible the ideal is to be approached, and the boundary lines will be fixed as close to the median meridians as a consideration of all interests will permit. The habits of life of our people bring a greater part of the ordinary activities of life after noon than before midday; and we can secure the greatest amount of daylight for the active hours, and to a certain extent avoid the diurnal peak of heat in the summer, by adopting a policy of generally making the time-breaking points somewhat west of the median meridian.

Because of the inconveniences which attend upon the use of dual standards of time within a community, the zones are to be made as compact and symmetrical as possible. Some inconvenience must result at every time-breaking point. In order to minimize that inconvenience, the time-breaking points should not be located in large centers when it is possible to place them in smaller places; preferably the more sparsely settled territory is sought in locating the zone boundaries.

Governmental requirements for the maintenance of a given standard of time, as expressed in state statutes and municipal ordinances, are to be respected as far as possible. While the power of Congress is paramount as to the regulation of interstate commerce and as to the objects enumerated in the daylight-saving act, state and municipal regulations may be controlling as to other matters involving the standards of time to be observed and within the exclusive jurisdiction of local authority. We have given great weight to the policy of the various states as expressed by their statutes and municipal ordinances. In but three states, Ohio, West Virginia, and Florida, has it been necessary to prescribe a different time standard than that expressed in local law; and in respect to those instances, the Ohio law seems never to have been regarded as effective so far as rail carriers are concerned, and the deviations we have prescribed in West Virginia apply only in one corner of the state and as to a few miles of railroad. The adjustment proposed herein leaves 32 states intact and four other states practically whole and within the limits of the time zones to which they are now generally accustomed. It has also

been possible to minimize considerably the number of points at which time will be changed in interstate rail transportation and the number of railroad lines crossed by the zone limits here proposed.

Commercial considerations which link together one section or state with another have been respected as far as possible, to the end that the customary hours of business may coincide.

With these purposes in mind, upon consideration of the whole record, we are of the opinion that the limits of the first four zones mentioned in the daylight-saving act should be those stated in Appendixes 1, 2, 3, and 4 to this report. It will be noted that some exceptions are made whereby certain carriers are permitted to carry their standard of time over into the general limits of an adjoining time zone. In such cases the Commission expects that the carriers will, in their published advertisements, their time cards, bulletin boards in stations, and in other like ways show the arrival and departure of their trains with reference to the standard of time herein prescribed for general use in the various communities, although, for operating purposes, permission may be herein granted to maintain the time of a neighboring zone.

TIME WHEN NEW ZONES SHALL BECOME EFFECTIVE.

Congress has prescribed that the order of this Commission defining the limits of the various zones may be modified from time to time. We take it that this is equivalent to vesting in us some discretion as to the time when the necessary changes in the zones shall be made.

Experienced railroad-operating officials who have testified on the subject have claimed that the difficulties in operation and the hazards due to the retarding of the standard clocks one hour, as the law requires shall be done annually, are more serious than when the clocks were advanced in last March. They have with unanimity recommended that no attempt should be made to combine simultaneously the readjustment of zone limits with the retarding of the clocks upon the morning of the last Sunday in October. While it is true that, in many instances, if it were feasible to readjust the boundaries of the zones when the clock is retarded, it would be unnecessary to make any readjustment of time at all and the carriers and the community could automatically progress from one zone to the adjoining eastern zone by continuing under the advanced summer time, it seems clear that, because of the effect upon carriers which run through such sections, and upon their connections, it will conduce to public safety first to permit the retarding of the clocks when contemplated by law and thereafter to make necessary zone readjustments.

Whenever possible changes in operating schedules are made at an hour and upon a day when traffic is at a light stage. Frequently such changes are made at the hour of 2 o'clock upon a Sunday morning, and this practice has been recognized by Congress in the enactment of the daylight-saving act. There are obvious advantages in making the change when business and the conduct of other ordinary affairs of daily life will be inconvenienced the least, especially if a Sunday or a holiday intervenes, and facilitates readjustments and compensation for the change. We therefore conclude that all interests will best be served by making no changes in the zone boundaries until after the standard time of each zone has been retarded one hour at 2 a. m. of October 27, 1918; and that such changes in the limits of zones as shall be necessary should be made at 2 a. m. on January 1, 1919.

ALASKA TIME ZONE.

The act provides that the standard time of the fifth zone, which shall include only Alaska, shall be based on mean astronomical time of the 150° of longitude west from Greenwich, and shall be known and designated as United States standard Alaska time. Our attention has been directed to the fact that the mainland of Alaska extends from approximately 130° to 168° west of Greenwich, which, translated into time, is equal to more than two and one-half hours. Juneau, the capital of the territory, with a longitude of approximately 134½° west, is more than one hour of time east of the 150th meridian to which Congress has referred the United States standard Alaska time.

Normally, we would expect to find the southeastern portion of Alaska, lying east of a southerly prolongation of the international boundary running through Mount St. Elias, in a zone based upon the standard of 135° west of Greenwich; while the remainder of Alaska would approximately be divided into two zones, based respectively upon meridians of 150° and 165° west of Greenwich. These three meridians would pass close to Skagway and Juneau, Seward and Nome, respectively. The creation of these three zones in Alaska would harmonize with the whole scheme of standard time and seemingly present no great obstacles for accomplishment.

However this may be, it is obvious that Congress has not vested any discretion in the Commission as to the standards of time to be observed in Alaska, and the remedy for the situation must be found in Congress, if at all.

HAWAIIAN ISLANDS.

It has been suggested to the Commission that the benefits to be derived from the daylight-saving act do not inure to the Hawaiian

Islands. That also is not a matter within the purview of the Commission to decide, for the daylight-saving act in terms related only to "the territory of continental United States" and it is only "within the respective zones created under the authority hereof" that standard time is to govern, and it is only as to "the standard time of each zone" that the provisions of the law with respect to advancing and retarding apply. We have so held informally, in response to an inquiry from the Secretary of the Interior.

An appropriate order will be issued.

51 I. C. C.

APPENDIXES.

APPENDIX 1.

EASTERN ZONE.

The first zone, designated as the United States standard Eastern time zone, shall include that portion of continental United States lying east of the following-described line, with exceptions and inclusions hereinafter enumerated, viz:

BOUNDARY LINE BETWEEN EASTERN AND CENTRAL ZONES.

Michigan.—Beginning on the boundary line between the United States and Canada east of Port Huron, Mich., thence southerly along the international boundary line through the St. Clair River, Lake St. Clair, Detroit River, and Lake Erie to the intersection of the international boundary line with the line between Ohio and Michigan; thence westerly along the north line of Ohio to North Cape, Mich.; thence through Maumee Bay and Maumee River to Toledo, Ohio.

Ohio.—From Toledo southerly and easterly immediately south and west of and parallel with the New York Central Railroad to Monroeville, crossing in said course the Lake Erie & Western Railroad at Fremont, the Cleveland, Cincinnati, Chicago & St. Louis Railway at Clyde, the New York, Chicago & St. Louis Railroad and the railway of the Pennsylvania Company at Bellevue; thence southerly and immediately west of and parallel with the Baltimore & Ohio Railroad to Toledo Junction, crossing in said course the Baltimore & Ohio Railroad at Willard, the Northern Ohio Railway at Plymouth, and the Cleveland, Cincinnati, Chicago & St. Louis Railway at Shelby Junction, and the Toledo division of the Pennsylvania Company at Toledo Junction; thence westerly and immediately north of and parallel with the Pittsburgh, Fort Wayne & Chicago line of the Pennsylvania Company to Crestline; thence crossing the Cleveland, Cincinnati, Chicago & St. Louis Railway and the railway of the Pennsylvania Company, and thence southerly and westerly and immediately north and west of and parallel with the Cleveland, Cincinnati, Chicago & St. Louis Railway to Gallon; thence southerly and westerly and immediately north and west of and parallel with the Erie Railroad to Marion, crossing in said course the eastern division of the Toledo & Ohio Central Railway at Martel; thence crossing the Erie Railroad and the Cleveland, Cincinnati, Chicago & St. Louis Railway; thence southerly and immediately east of and parallel with the Sandusky division of the railway of the Pennsylvania Company to Columbus, crossing in said course the Cleveland, Cincinnati, Chicago & St. Louis Railway at Delaware; thence crossing the railway of the Pennsylvania Company, the Toledo & Ohio Central Railway, the Hocking Valley Railway, and the Baltimore & Ohio Railroad; thence southerly and easterly and immediately west and south of and parallel with the Hocking Valley Railway to Gallipolis, crossing in said

course the Norfolk & Western Railway at Valley Crossing, the railway of the Pennsylvania Company at Lancaster, and the Hocking Valley Railway and the Baltimore & Ohio Railroad at Dundas; thence following the Ohio River along the line between Ohio and West Virginia southerly and westerly to the junction of the states of Ohio, West Virginia, and Kentucky.

West Virginia-Kentucky.—From the junction of said state lines along the line between West Virginia and Kentucky southerly to its intersection with the line between Kentucky and Virginia.

Virginia.—From the intersection of said state lines southwesterly following the line between Kentucky and Virginia to the west line of Dickinson county, Va.; thence southerly along said county line to its intersection with Indian Creek; thence southerly along Indian Creek to Norton; thence crossing the connection between the Norfolk & Western Railway, Southern Railway, and Louisville & Nashville Railroad southeasterly through Dungannon, and there crossing the Carolina, Clinchfield & Ohio Railway to Mendota; thence easterly and southerly and immediately north and east of and parallel with the Southern Railway to Bristol, Va.-Tenn.

Tennessee-North Carolina.—At Bristol crossing the connection between the Southern Railway and the Norfolk & Western Railway, and thence southerly and westerly immediately south and east of and parallel with the Southern Railway to Telford, Tenn., crossing in said course the Carolina, Clinchfield & Ohio Railway at Johnson City, Tenn.; thence southerly to Asheville, N. C., there crossing the Southern Railway; thence southwesterly along Pisgah Ridge to the east boundary of Jackson county, N. C.; thence southwesterly to the northern terminus of the Tallulah Falls Railway at Franklin, N. C.; thence southerly and immediately west of and parallel with said last-mentioned railway to the north boundary of Georgia.

Georgia.—From the last-mentioned point west along said state boundary line to the east line of Union county, Ga.; thence southerly along the east lines of Union, Lumpkin, Dawson, and Forsyth counties and the south line of Milton county, Ga., to the eastern line of Cobb county, Ga.; thence southerly to Atlanta, there crossing the Southern Railway and the Seaboard Air Line Railway; thence southeasterly and immediately south and west of and parallel with the line of the Southern Railway to Macon, there crossing the Central of Georgia Railway; thence southerly and immediately west of and parallel with the Georgia Southern & Florida Railway to Sofkee; thence southerly to the connection of the Central of Georgia Railway and the Ocilla Southern Railroad at Perry; thence southwesterly to the southwest corner of Houston county; thence southerly and westerly along the southern boundary of Macon county to the Central of Georgia Railway; thence southerly and immediately east of and parallel with said last-mentioned railway to Americus; thence crossing the Seaboard Air Line Railway, southerly and immediately east of and parallel with the Central of Georgia Railway to Albany, there crossing the connection between the Seaboard Air Line Railway, Central of Georgia Railway, Atlantic Coast Line Railroad, Georgia Northern Railway, and the Georgia Southwestern & Gulf Railway; thence southerly immediately west of and parallel with the Atlantic Coast Line Railroad to the north boundary of Florida crossing in said course the Atlantic Coast Line Railroad at Thomasville.

Florida.—From the last-mentioned point westerly along the line between Georgia and Florida to the Apalachicola River; thence southerly along the main channel of the Apalachicola River to Apalachicola Bay and the Gulf of Mexico.

Exceptions.—Those portions of the lines of railroad below named located east of the zone boundary line above described shall be excepted from United States standard Eastern time zone and shall be included in United States standard Central time zone, viz:

Name of railroad.	From—	To—
Atlantic Coast Line.....	Georgia-Florida state line.....	River Junction, Fla.
Baltimore & Ohio.....	Dundas, Ohio.....	Parkersburg, W. Va.
Do.....	Columbus, Ohio.....	Newark, Ohio.
Chesapeake & Ohio.....	Huntington, W. Va.....	Big Sandy River.
Cleveland, Cincinnati, Chicago & St. Louis..	Delaware, Ohio.....	Gallion, Ohio.
Do.....	Marion, Ohio.....	Cleveland, Ohio.
Do.....	Columbus, Ohio	Delaware, Ohio.
Do.....	Clyde, Ohio.....	Sandusky, Ohio.
Do.....	Edison, Ohio	Mt. Gilead, Ohio.
Georgia, Florida & Alabama.....	Georgia-Florida state line.....	Carabelle, Fla.
Lake Erie & Western.....	Fremont, Ohio.....	Sandusky, Ohio.
Louisville & Nashville.....	River Junction, Fla.....	Apalachicola River.
Northern Ohio.....	Plymouth, Ohio.....	Akron, Ohio.
Norfolk & Western.....	Valley Crossing, Ohio.....	Columbus, Ohio.
Do.....	Williamson, W. Va.....	Ohio River at Kenova, W. Va.
Pelham & Havana.....	Georgia-Florida state line.....	Havana, Fla.
Pennsylvania Company.....	Bellevue, Ohio.....	Sandusky, Ohio.
Do.....	Newark, Ohio	Columbus, Ohio.
Pennsylvania Company, Toledo division....	Toledo Junction.....	Mansfield, Ohio.
Pennsylvania Company, Zanesville division.	Lancaster, Ohio.....	Trinway, Ohio.
Southern.....	Johnson City, Tenn.....	Embreeville, Tenn.
Toledo & Ohio Central.....	Martel, Ohio.....	Thurston, Ohio.
Do.....	Columbus, Ohio	Corning, Ohio.
Zanesville & Western.....	Thurston, Ohio.....	Zanesville, Ohio.
Do.....	Fultonham, Ohio.....	Shawnee, Ohio.

The following railroad lines located west of zone boundary line above described shall be included within the United States standard Eastern time, viz:

Name of railroad.	From—	To—
Apalachicola Northern.....	Apalachicola, Fla., and Apa- lachicola River.	Port St. Joe, Fla.
Atlanta, Birmingham & Atlantic.....	Manchester, Ga.....	Line of Dooly County, Ga.
Carolina, Clinchfield & Ohio.....	Dungannon, Va.....	Johnson City, Tenn.
Do.....	Virginia-Kentucky line.....	Elkhorn City, Ky.
Flovilla & Indian Springs.....	Flovilla, Ga.....	Indian Springs, Ga.
Hocking Valley.....	Dundas, Ohio.....	Jackson, Ohio.
Norfolk & Western branch.....	Big Sandy River.....	Morcoal and McVeigh, Ky

The following-named municipalities located upon the above-described zone boundary line shall be considered as within the United States standard Eastern zone:

Fremont, Clyde, Bellevue, Monroeville, Willard, Shelby, Shelby Junction, Gallion, Lancaster, Dundas, and Gallipolis, Ohio; Dungannon, Va.; Bristol, Va.-Tenn.; Asheville and Franklin, N. C.; points on Southern Railway, McDonough, Ga., to Macon, Ga.; Perry, and Thomasville, Ga.

All other municipalities located upon the above-described zone boundary line, not specifically named, shall be considered as within the United States standard Central time zone.

The effect of the foregoing is that the following lines of railroad are wholly within the limits of the zone above described:

RAILROADS WHOLLY WITHIN EASTERN ZONE.

All railroads lying wholly within the territory comprising the states of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, South Carolina, Vermont, and West Virginia. Also the following carriers: Akron & Barberton Belt Railroad, Akron, Canton & Youngstown Railway, Americus & Atlantic Railroad, Apalachi-

cola Northern Railroad, Atlanta, Stone Mountain & Lithonia Railroad, Atlantic, Waycross & Northern Railroad, Augusta & Savannah Railroad, Augusta & Summerville Railroad, Augusta Southern Railroad, Bessemer & Lake Erie Railroad, Carolina & North-Western Railway, Carolina, Clinchfield & Ohio Railway, Charleston & Western Carolina Railway, East Georgia Railway, East Tennessee & Western North Carolina Railroad, Elberton & Eastern Railroad, Fairport, Painesville & Eastern Railroad, Flint River & Northeastern Railroad, Flovilla & Indian Springs Railway, Gainesville & Northwestern Railroad, Gainesville Midland Railway, Georgia & Florida Railway, Georgia Coast & Piedmont Railroad, Georgia Northern Railway, Georgia Railroad, Georgia Southern & Florida Railway, Georgia Southwestern & Gulf Railroad, Greene County Railroad, Hartwell Railway, Hawkinsville & Florida Southern Railway, Jacksonville Terminal, Kanawha & Michigan Railway, Kanawha & West Virginia Railroad, Lake Erie & Eastern Railroad, Lakeside & Marblehead Railroad, Lake Terminal Railroad, Laurel Fork Railway, Laurel Railway, Lawrenceville Branch Railroad, Lorain, Ashland & Southern Railroad, Lorain & West Virginia Railway, Louisville & Wadley Railroad, Macon, Dublin & Savannah Railroad, Marquette & Bessemer Dock & Navigation Company, Midland Railway, Milltown Air Line Railway, Newburgh & South Shore Railway, Ocala & Southwestern Railroad, Ocilla, Pinebloom & Valdosta Railroad, Ocilla Southern Railroad, Ohio River & Western Railway, Pittsburgh & Lake Erie Railroad, Pittsburgh & West Virginia Railway, Pittsburgh, Lisbon & Western Railroad, St. John River Terminal, Sandersville Railroad, Savannah & Atlanta Railway, Savannah & Southern Railway, Savannah & Statesboro Railway, Savannah, Hinesville & Western Railroad, Shearwood Railway, Smithsonia & Dunlap Railroad, South Georgia Railway, Statenville Railway, Sylvania Central Railway, Toledo Southeastern Railway, Unicol Railway, Union Point & White Plains Railroad, Valdosta, Moultrie & Western Railroad, Virginia-Carolina Railway, Wadley Southern Railway, Washington & Lincolnton Railroad, Waycross & Southern Railroad, Waycross & Western Railroad, West Side Belt Railroad, Wheeling & Lake Erie Railway, Wheeling Terminal Railway, Wrightsville & Tennille Railroad, Youngstown & Northern Railroad, Youngstown & Ohio River Railroad.

All railroads lying wholly within the following states are within the Eastern zone with the exceptions noted, which are within the Central zone, viz:

Florida.—Atlanta & St. Andrews Bay Railroad; Birmingham, Columbus & St. Andrews Railroad; Florida & Alabama Railroad; Gulf, Florida & Alabama Railway; Louisville & Nashville Railroad; Marianna & Blountstown Railroad; Pensacola, Mobile & New Orleans Railroad.

North Carolina.—Appalachian Railway; Carolina & Tennessee Southern Railway; Madison County Railroad; Smoky Mountain Railway; Tennessee & North Carolina Railroad.

Virginia.—Interstate Railroad; Roaring Fork Railroad.

RAILROADS WITHIN BOTH EASTERN AND CENTRAL ZONES.

The lines of the following-named carriers lie in both Eastern and Central zones. Such lines will be operated under the time standard specified below:

	Time.
Atlanta, Birmingham & Atlantic Railway:	
Brunswick, Ga.	} to Manchester, Ga.-----Eastern.
Waycross, Ga.	
Thomasville, Ga.	
Manchester, Ga., to { Atlanta, Ga. Birmingham, Ala. }	-----Central.

Atlantic Coast Line Railroad:

Montgomery, Ala., to Thomasville, Ga.-----Central.
 Balance of line-----Eastern.

Baltimore & Ohio Railroad:

All lines east of Willard, Ohio, Newark, Ohio, Parkersburg,
 W. Va., and Kenova, W. Va.; and from Sandusky to Shaw-
 nee, Ohio-----Eastern.

Parkersburg, W. Va., to St. Louis, Mo. }
 Cincinnati, Ohio, to Toledo, Ohio }-----Central.
 Newark, Ohio, to Cincinnati, Ohio }
 Willard, Ohio, to Chicago, Ill. }

Central of Georgia Railway:

Savannah, Ga., to Macon, Ga. }
 Dover, Ga., to Dublin, Ga. }-----Eastern.
 Millen, Ga., to Augusta, Ga. }
 Macon, Ga., to Athens, Ga. }
 Gordon, Ga., to Porterville, Ga. }

Macon, Ga., to Atlanta, Ga. }
 Macon, Ga., to Birmingham, Ala. }-----Central.
 Griffin, Ga., to Chattanooga, Tenn. }
 Newnan, Ga., to Columbus and Andalusia, Ga. }
 Columbus, Ga., to Americus and Albany, Ga. }
 Americus, Ga., to Montgomery, Ala. }
 Opelika, Ala., to Roanoke, Ala. }
 Eufaula, Ala., to Ozark, Ala. }
 Perry, Ga., to Fort Riley, Ga. }
 Cuthbert, Ga., to Fort Gaines, Ga. }

Chesapeake & Ohio Railway:

Old Point Comfort, Va. } to Huntington, W. Va.-----Eastern.
 Washington, D. C. }

Huntington, W. Va., to { Louisville, Ky. }-----Central.
 Cincinnati, Ohio }

Erie Railroad:

New York, N. Y., to Cleveland, Ohio; New York, N. Y., to
 Marion, Ohio;-----Eastern.

Marion, Ohio, to Dayton, Ohio; Marion, Ohio, to Chicago, Ill.-----Central.

Hocking Valley Railway:

Pomeroy, Ohio, to Columbus, Ohio; Athens, Ohio, and branches,
 to Logan, Ohio; Logan, Ohio, to Jackson, Ohio-----Eastern.

Columbus, Ohio, to Toledo, Ohio-----Central.

New York Central Railroad:

New York, N. Y., to Toledo, Ohio-----Eastern.

All lines west and north of Toledo-----Central.

New York, Chicago & St. Louis Railroad:

Buffalo, N. Y., to Bellevue, Ohio-----Eastern.

Bellevue, Ohio, to Chicago, Ill.-----Central.

Norfolk & Western Railway:

East of Williamson, W. Va.-----Eastern.

West of Williamson, W. Va.-----Central.

Ohio Electric Railway:

Columbus, Ohio, to Zanesville, Ohio-----Eastern.

Lines west of Columbus, Ohio-----Central.

Pennsylvania Railroad:

Philadelphia, Pa., to Crestline, Ohio; Pittsburgh, Pa., to Crestline, Ohio; Pittsburgh, Pa., to Newark, Ohio; Columbus, Ohio, to Cleveland, Ohio; Pittsburgh, Pa., to Cleveland, Ohio; Pittsburgh, Pa., to Ashtabula, Ohio; Pittsburgh, Pa., to Erie, Pa.-----**Eastern.**

Toledo Junction, Ohio, to Toledo, Ohio; Trinway, Ohio, to Cincinnati, Ohio; Newark, Ohio, to Columbus, Ohio; Columbus, Ohio, to Sandusky, Ohio; all lines west of Crestline and Columbus-----**Central.**

Seaboard Air Line Railway:

Atlanta, Ga., to Birmingham, Ala.; Americus, Ga., to Montgomery, Ala.; Albany, Ga., to Columbus, Ga.-----**Central.**

Balance of line-----**Eastern.**

Southern Railway:

All that part of line east of Bristol, Tenn.-Va.—Asheville, and Lake Toxaway, N. C.; east of Atlanta, Ga., on the Atlanta-Washington line; south of Atlanta and east of McDonough, Ga., and Fort Valley, Ga.-----**Eastern.**

All of the line west of the points above mentioned-----**Central.**

APPENDIX 2.**CENTRAL ZONE.**

The second zone, designated as the United States Standard Central time zone, shall include that portion of continental United States lying west of the first zone as hereinbefore described, and east of the following described line, with exceptions and inclusions hereinafter enumerated, viz:

BOUNDARY BETWEEN CENTRAL AND MOUNTAIN ZONES.

North Dakota.—Beginning on the boundary line between the United States and Canada on the west side of the Minneapolis, St. Paul & Sault Ste. Marie Railroad at Portal, N. Dak.; thence southeasterly immediately south of and parallel with the said railroad to its connection with the Great Northern Railroad at Minot, crossing in said course the Whitetail branch of said Minneapolis, St. Paul & Sault Ste. Marie Railroad at Flaxton and the Great Northern Railroad at Minot; thence south to the thirteenth standard parallel; thence west to the main channel of the Missouri River; thence southerly and easterly along the main channel of the Missouri River to the boundary between North Dakota and South Dakota, detouring to the west in such course at the crossing of the Northern Pacific Railway near Mandan so as to include that portion of the Dakota division of said railroad which runs east from Mandan.

South Dakota.—From the intersection of the main channel of the Missouri River and the northern boundary line of the state of South Dakota, southerly along the main channel of said river to the crossing of the Chicago & North Western Railway near Pierre, detouring to the east in said course to include that portion of the Chicago, Milwaukee & St. Paul Railway which lies west of Mobridge; from Pierre southwesterly to the intersection of the base line and the seventh guide meridian west; thence south along said guide meridian to the White River, crossing in said course the Chicago, Milwaukee & St. Paul Railway at Murdo Mackenzie; thence along the channel of the White River to its inter-

section with the third guide meridian west; thence south along the third guide meridian with its offsets to the boundary line between Nebraska and South Dakota.

Nebraska.—From the intersection of the third guide meridian, west, and the north boundary line of the state of Nebraska, running south along said guide meridian to the Niobrara River; thence easterly along said river to the east line of Brown county, Nebr.; thence south along the east line of Brown and Blaine counties, and along the range line between ranges 20 and 21 west, and detouring to the west to include that portion of the Chicago & North Western Railway which lies east of Long Pine, to the township line between townships 18 and 19 north; thence west along said township line to the range line between townships 30 and 31 west of the sixth principal meridian, thence south along said range line with its offsets to the Chicago, Burlington & Quincy Railroad near Perry, in Redwillow county, detouring to the east in said course to include that portion of the Union Pacific Railroad which lies west of North Platte; thence easterly and immediately north of and parallel with the Chicago, Burlington & Quincy Railroad to the western limits of McCook, there crossing the Chicago, Burlington & Quincy Railroad; thence south to the Republican River; thence following the Republican River to Republican Junction, crossing in said course the St. Francis branch of the Chicago, Burlington & Quincy Railroad at Orleans and the Oberlin branch of said railroad at Republican Junction; thence southerly to the intersection of the township line between townships 17 and 18, west of the sixth principal meridian, to the boundary line between Kansas and Nebraska.

Kansas.—From the point last described, in a southerly direction through Phillipsburg, Stockton, and Plainville to Ellis, crossing in said course the Chicago, Rock Island & Pacific Railway at Phillipsburg, the Missouri Pacific Railroad near Glade, and the Union Pacific Railroad at Plainville and Ellis; thence south along the west line of Ellis county and the east line of Ness county to the northeast corner of Hodgeman county; thence west along the north line of Hodgeman county to the one-hundredth degree meridian, west; thence south along said meridian to the Chicago, Rock Island & Pacific Railway near Mineola, detouring to the west in said course to include that portion of the Atchison, Topeka & Santa Fe Railway east of Dodge City, and that portion of the Chicago, Rock Island & Pacific Railway south and east of Dodge City and South Dodge; thence southwesterly and immediately north of and parallel with the Chicago, Rock Island & Pacific Railway to Liberal, there crossing the Chicago, Rock Island & Pacific Railway; thence crossing said railroad southerly to the boundary line between Oklahoma and Kansas and easterly along said state boundary line to the Cimarron River, at the northwest corner of Woods county, Okla.

Oklahoma.—From the intersection of the Cimarron River and the north boundary of the state of Oklahoma as last described, thence southeasterly following the course of the Cimarron River to the line between townships 24 and 25 north; thence east along said township line and crossing the Atchison, Topeka & Santa Fe Railway at Waynoka; thence southerly and westerly immediately south thereof and parallel with the line of said railway to the meridian 99° west; thence south along said meridian to the Washita River; thence southwesterly through Ralph, and immediately north of and parallel with the Chicago, Rock Island & Pacific Railway to the west boundary of Sayre; thence crossing said railway and running immediately south thereof and parallel therewith in a westerly direction to the north and south boundary line between

Oklahoma and Texas; thence south along said state boundary line to the southeast corner of Collingsworth county, Tex.

Texas.—From the southeast corner of Collingsworth county, thence along the south line of said county and Donley county to the northwest corner of Hall county; thence south along the boundary line between Briscoe and Hall, Motley and Floyd, Dickens and Crosby, Kent and Garza counties to the north line of Scurry county; thence east along the north line of said Scurry county to the northeast corner thereof; thence south along the east line of said Scurry county to the Atchison, Topeka & Santa Fe Railway near Pyron; thence easterly and immediately north of and parallel with said railway to Sweetwater; thence crossing the last-named railway, and running westerly and immediately north of and parallel with the Texas & Pacific Railway to Big Springs; thence south across the Texas & Pacific Railway to the north line of Glasscock county; thence east along the north line and south along the east line of said county and Regan county to the northwest corner of Irion county; thence along the north line of Irion county to the northeast corner thereof and thence in an easterly direction to San Angelo; thence crossing the Kansas City, Mexico & Orient Railway, east to the meridian of 100° west; thence south along said meridian to the Rio Grande River and the boundary line between the United States and Mexico.

Exceptions.—Those portions of the lines of railroad below named located east of the zone boundary line above described shall be excepted from United States standard Central time zone and shall be included in United States standard Mountain time zone, viz:

Name of railroad.	From—	To—
Great Northern.....	Minneapolis, St. Paul & Sault Ste. Marie Ry.	Northgate, N. Dak.
Chicago, Burlington & Quincy.....	Curtis, Nebr.....	Line between townships 30 and 31 west of sixth principal meridian.
Do.....	Ravenna, Nebr.....	Line between townships 18 and 19 north.
Fort Worth & Denver City.....	Childress, Tex.....	Donley County, Tex.
Missouri Pacific.....	Holdington, Kans.....	Ness county, Kans.
Atchison, Topeka & Santa Fe.....	Great Bend, Kans.....	Ness county, Kans.
Kansas City, Mexico & Orient.....	Altus, Okla.....	San Angelo, Tex.

The following railroad lines, located west of the zone boundary line above described, shall be included within the United States standard Central time zone, viz:

Name of railroad.	From—	To—
Missouri Pacific.....	Glade, Kans.....	Lenora, Kans.
Clinton & Oklahoma Western.....	Ralph, Okla.....	Cheyenne, Okla.
Wichita Falls & Northwestern.....	Elk City, Okla.....	Forgan, Okla.
Missouri, Kansas & Texas of Texas.....	Oklahoma-Texas state line....	Wellington, Tex.
Galveston, Harrisburg & San Antonio.....	Del Rio, Tex.....	100 degree meridian, west.

The following-named municipalities located upon the above-described zone boundary line shall be considered as within the United States standard Central time zone:

Portal, Flaxton, and Minot, N. Dak.; Murdo Mackenzie, S. Dak.; Phillipsburg, Stockton, Plainville, Ellis, and Liberal, Kans.; Waynoka, Ralph, and Sayre, Okla.; Sweetwater, Big Springs, and San Angelo, Tex.

All other municipalities located upon the above-described zone boundary line not specifically named shall be considered as within United States standard Mountain time zone.

The effect of the foregoing is that the following lines of railroad are wholly within the limits of the zone above described:

RAILROADS WHOLLY WITHIN CENTRAL ZONE.

All railroads lying wholly within the territory comprising the states of Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Oklahoma, and Wisconsin are in Central time zone. Also the following carriers: Alabama, Florida & Gulf Railroad, Anthony & Northern Railway, Atlanta & St. Andrews Bay Railroad, Atlanta & West Point Railroad, Bowden Railway, Chicago & Erie Railroad, Cincinnati & Westwood Railroad, Cincinnati Northern Railroad, Cincinnati, Findlay & Fort Wayne Railway, Cincinnati, Georgetown & Portsmouth Railroad, Cleveland, Cincinnati, Chicago & St. Louis Railway, Columbus & Xenia Railroad, Dayton & Union Railroad, Dayton, Springfield & Xenia Southern Railway, Detroit & Toledo Shore Line Railroad, Detroit, Toledo & Ironton Railroad, Devils Lake & Chautauqua Transfer, Escambia Railway, Farmers Grain & Shipping, Georgia, Florida & Alabama Railway, Gulf, Florida & Alabama Railway, Illinois Central Railroad, Kansas City Northwestern Railroad, Kansas City Southern Railway, Kansas Southwestern Railway, Lake Erie & Western Railroad, Louisville & Nashville Railroad, Leavenworth & Topeka Railway, Macon & Birmingham Railway, Midland Continental Railroad, Midland Valley Railroad, Michigan Central Railroad, Minneapolis & St. Louis Railroad, Missouri, Kansas & Texas Railway, Missouri Kansas & Texas Railway of Texas, Nashville, Chattanooga & St. Louis Railway, New Orleans, Texas & Mexico Railway, Northern Dakota Railway, Northern Ohio Railway, Pelham & Havana Railroad, Pere Marquette Railway, Rome & Northern Railroad, St. Joseph & Grand Island Railway, St. Joseph Valley Railway, St. Louis, Kennett & Southeastern Railroad, St. Louis Southwestern Railway, Salina Northern Railroad, Talbotton Railroad, Tennessee, Alabama & Georgia Railroad, Toledo & Ohio Central Railway, Toledo, Angola & Western Railway, Toledo, St. Louis & Western Railroad, Toledo Terminal Railroad, Wabash Railway, Watertown & Sioux Falls Railway, Western Ohio Railway, Wichita Falls & Northwestern Railway, Zanesville & Western Railway.

All railroads lying wholly within Tennessee are in the Central zone with the exceptions noted below which are within the Eastern zone, viz: East Tennessee & Western North Carolina Railroad, Laurel Fork Railway, Laurel Railway, Linville River Railway, Unicoi Railway.

All railroads lying wholly within Texas are in the Central zone except the Midland & Northwestern Railway, Rio Grande, El Paso & Santa Fe Railroad, Roscoe, Snyder & Pacific Railway, which are in the Mountain zone.

RAILROADS WITHIN BOTH CENTRAL AND MOUNTAIN ZONES.

The lines of the following-named carriers lie in both Central and Mountain zones. Such lines will be operated under the time standard specified below:

Chicago & North Western Railway:

Rapid City, S. Dak., to Pierre, S. Dak.	}-----	Time.
Lander, S. Dak., to Long Pine, Nebr.		Mountain.
All lines east of Long Pine, Nebr., and Pierre, S. Dak.		Central.

Chicago, Burlington & Quincy Railroad:

Ravenna, Nebr.	}	-----Central.
Chicago, Ill., to Curtis, Nebr.		
McCook, Nebr.		
Ravenna, Nebr., to Billings, Mont.	}	-----Mountain.
Curtis, Nebr., to Denver, Colo.		
McCook, Nebr., to Denver, Colo.		
Orleans, Nebr., to St. Francis, Kans.		
Republican Junction, Nebr., to Oberlin, Kans.		

Chicago, Rock Island & Pacific Railway and Chicago, Rock Island & Gulf Railway:

Chicago, Ill., to Phillipsburg, Kans.	}	-----Central.
Kansas City, Mo., to Liberal, Kans.		
Phillipsburg, Kans., to Colorado Springs, Colo.	}	-----Mountain.
Liberal, Kans., to Tucumcari, N. Mex.		
Sayre, Okla., to Tucumcari, N. Mex.		

Clinton & Oklahoma Western Railway:

Clinton, Okla., to Cheyenne, Okla.	-----Central.
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Fort Worth & Denver City Railway:

Childress, Tex., to Forth Worth, Tex.	-----Central.
Childress, Tex., to Sixela, N. Mex.	-----Mountain.

Kansas City, Mexico & Orient Railway:

Wichita, Kans., to Altus, Okla.	-----Central.
Altus, Okla., to Alpine, Tex.	-----Mountain.

Minneapolis, St. Paul & Sault Ste. Marie Railway:

Whitetail, Mont., to Flaxton, N. Dak.	-----Mountain.
Balance of line	-----Central.

Missouri Pacific Railroad:

Holsington, Kans., to Great Bend, Kans.	}	-----Mountain.
Holsington, Kans., to Pueblo, Colo.		
Downs, Kans., to Lenora, Kans.	}	-----Central.
Balance of line.		

Texas & Pacific Railway:

New Orleans, La., to Big Spring, Tex.	}	-----Central.
Texarkana, Tex., to Big Spring, Tex.		
Big Spring, Tex., to El Paso, Tex.		-----Mountain.

Union Pacific Railroad:

Omaha, Nebr., to North Platte, Nebr.	}	-----Central.
Kansas City, Mo., to		
Plainville, Kans.		
North Platte, Nebr., to Ogden, Utah.	}	-----Mountain.
Plainville, Kans., to Oakley, Kans.		
Ellis, Kans., to Denver, Colo.		

APPENDIX 8.

MOUNTAIN ZONE.

The third zone, designated as the United States standard Mountain time zone, shall include that portion of continental United States lying west of the second zone, as hereinbefore described, and east of the following-described line, with additions hereinafter enumerated, viz:

Montana.—Beginning at a point on the boundary line between the United States and Canada where the same is intersected by the east line of the Black-

feet Indian Reservation; thence along the east line of said reservation, crossing the Great Northern Railway at Cut Bank, Mont.; thence following the easterly and southerly boundary of said reservation and Birch Creek to the Continental Divide; thence south along the Continental Divide to Gould, approximately 112 degrees 30 minutes west longitude and 46 degrees 55 minutes north latitude; thence southeasterly to Johns; thence southeasterly immediately west of and parallel with the Great Northern Railway to Helena and to the most northerly northwest corner of Jefferson county, crossing the Northern Pacific Railway at Helena; thence following the northwest boundary of Jefferson county to the south boundary line of Powell county; thence south to Butte, there crossing the Northern Pacific Railway and Chicago, Milwaukee & St. Paul Railway; thence southerly immediately west of and parallel with the Oregon Short Line Railroad to the boundary line between Idaho and Montana near Monida.

Idaho.—From the point last described southerly immediately west of and parallel with the Oregon Short Line Railroad to Pocatello, there crossing the Oregon Short Line Railroad; and then southerly and immediately west of and parallel with the same railroad to the boundary line between Utah and Idaho near Weston.

Utah.—From the point last described southerly immediately west of and parallel with the Oregon Short Line Railroad through Brigham to Ogden, crossing at Ogden a connection between the railroad of the Southern Pacific, Union Pacific Railway, and Denver & Rio Grande Railroad; thence southerly immediately west of and parallel with the Denver & Rio Grande Railroad to Salt Lake City; thence in a southwesterly direction immediately north of and parallel with the Los Angeles & Salt Lake Railroad to the boundary line between Nevada and Utah near Uvada; thence south along said boundary line to the southwest corner of Utah.

Arizona.—From the southwest corner of the state of Utah thence along the north line of the state of Arizona to its intersection with the meridian 113 degrees west; thence south on said meridian to the north line of Yavapai county; thence southeasterly along said county line to a point north of Seligman; thence south and crossing the Atchison, Topeka & Santa Fe Railway at Seligman; thence southwesterly to the confluence of the Williams and Colorado rivers; thence southerly following the Colorado River to the boundary between the United States and Mexico, crossing in said course the Atchison, Topeka & Santa Fe Railway at Parker, Ariz., and the Southern Pacific Railway at Yuma, Ariz.

Exceptions.—Those portions of the lines of railroad below named located west of the zone boundary line above described shall be excepted from United States standard Pacific time zone and shall be included in United States standard Mountain time zone, viz:

Name of railroad.	From—	To—
Chicago, Milwaukee & St. Paul.....	Butte, Mont.....	Deer Lodge, Mont.
Gilmore & Pittsburgh.....	Armstead, Mont.....	Gilmore and Salmon, Mont.
Oregon Short Line.....	Blackfoot, Idaho.....	Mackay, Idaho.
Do.....	Moreland Junction, Idaho.....	Aberdeen, Idaho.
Do.....	Brigham, Utah.....	Malad City, Idaho.
Do.....	Clearfield, Utah.....	Syracuse, Utah.
Los Angeles & Salt Lake.....	Delta, Utah.....	Lucerne, Utah.
Do.....	Millford, Utah.....	Newhouse, Utah.
Do.....	Caliente, Nev.....	Utah-Nevada State Line.

All municipalities located upon the above-described zone boundary line shall be considered as within United States standard Mountain time zone.

The effects of the foregoing is that the following lines of railroad are wholly within the limits of the zone above described :

RAILROADS WHOLLY WITHIN THE MOUNTAIN ZONE.

All railroads lying wholly within the territory comprising the states of Arizona, Colorado, New Mexico, and Wyoming. Also the following carriers: Arizona & New Mexico Railway, Ballard & Thompson Railroad, Bamberger Electric Railroad, Billings & Central Montana Railway, Chicago, Rock Island & Gulf Railway, Colorado, Kansas & Oklahoma Railroad, Colorado & Southern Railway, Denver & Rio Grande Railroad, El Paso & Southwestern, Garden City Western Railway, Gilmore & Pittsburgh Railway, Montana Western Railway, Montana, Wyoming & Southern Railroad, Panhandle & Santa Fe Railway, Rapid City, Black Hills & Western Railroad, Ray & Gila Valley Railroad, Salt Lake & Ogden Railway, Salt Lake & Utah Railroad, Salt Lake, Garfield & Western Railway, Tooele Valley Railway, White Sulphur Springs & Yellowstone Park Railway, Wyoming & Missouri River Railroad, Wyoming Railway, Yellowstone Park Railway.

RAILROADS WITHIN BOTH MOUNTAIN AND PACIFIC ZONES.

The lines of the following-named carriers lie in both Mountain and Pacific zones: Such lines will be operated under the time standard specified below :

Los Angeles & Salt Lake Railroad :	Time.
Salt Lake City, Utah, to Caliente, Nev.....	Mountain.
Caliente, Nev., to Los Angeles, Cal.....	Pacific.
Oregon Short Line Railroad :	
Pocatello, Idaho, to Huntington, Oreg.....	Pacific.
Granger, Wyo., to Pocatello, Idaho.....	} Mountain :
Butte, Mont., to Salt Lake City, Utah.....	
Blackfoot, Idaho, to McKay, Idaho.....	
Moreland Junction, Idaho, to Aberdeen, Idaho.....	

APPENDIX 4.

PACIFIC ZONE.

The fourth zone, designated as the United States standard Pacific time zone, shall include that portion of continental United States, not including Alaska, lying west of the third zone as hereinbefore described, with the exceptions hereinbefore enumerated.

The effect of the foregoing is that the following lines of railroad are wholly within the limits of the zone above described :

RAILROADS WHOLLY WITHIN PACIFIC ZONE.

All railroads lying wholly within the territory comprising the states of California, Nevada, Oregon, and Washington. Also the following carriers: Butte, Anaconda & Pacific Railway, Inter-Mountain Railway, Nezperce & 51 I. C. C.

Idaho Railroad, Oregon-Washington Railroad & Navigation Company, Spokane & Inland Empire Railroad, Spokane International Railway, Washington, Idaho & Montana Railway, Pacific & Idaho Northern Railway, Western Pacific Railroad, Craig Mountain Railway.

RAILROADS WITHIN CENTRAL, MOUNTAIN, AND PACIFIC ZONES.

The lines of the following-named carriers lie in Central, Mountain, and Pacific zones. Such lines will be operated under the time standard specified below:

Atchison, Topeka & Santa Fe Railway:

All the line east of Great Bend, Dodge City, and Englewood,	Time.
Kans.. Waynoka, Okla., and Sweetwater, Tex.....	Central.
Great Bend, Kans., to Denver, Colo.....	} Mountain.
Dodge City, Kans., to Seligman, Ariz.....	
Waynoka, Okla., to Parker, Ariz.....	
Sweetwater, Tex., to El Paso, Tex.....	
West of Seligman and Parker, Ariz.....	Pacific.

Chicago, Milwaukee & St. Paul Railway:

All lines east of Mobridge, S. Dak., and Murdo MacKenzie,	
S. Dak	Central.
Deer Lodge, Mont., to Mobridge, S. Dak.....	} Mountain.
Rapid City, S. Dak., to Murdo MacKenzie, S. Dak.....	
West of Deer Lodge, Mont.....	Pacific.

Great Northern Railway:

St. Paul and Duluth, Minn. to.....	<table border="0"> <tr><td>Minot, N. Dak.</td></tr> <tr><td>Forbes, N. Dak.</td></tr> <tr><td>Aberdeen, S. Dak.</td></tr> <tr><td>Huron, S. Dak.</td></tr> <tr><td>Yankton, S. Dak.</td></tr> <tr><td>Sioux City, Iowa.</td></tr> </table>	Minot, N. Dak.	Forbes, N. Dak.	Aberdeen, S. Dak.	Huron, S. Dak.	Yankton, S. Dak.	Sioux City, Iowa.	Central.
Minot, N. Dak.								
Forbes, N. Dak.								
Aberdeen, S. Dak.								
Huron, S. Dak.								
Yankton, S. Dak.								
Sioux City, Iowa.								
Minot, N. Dak., to.....	<table border="0"> <tr><td>Butte, Mont.</td></tr> <tr><td>Cutbank, Mont.</td></tr> </table>	Butte, Mont.	Cutbank, Mont.	Mountain.				
Butte, Mont.								
Cutbank, Mont.								
West of Cutbank and Butte, Mont.....		Pacific.						

Northern Pacific Railway:

Ashland, Wis.,	} to Mandan, N. Dak.....	Central.		
Duluth, Minn..				
St. Paul, Minn.,				
Mandan, N. Dak., to.....	<table border="0"> <tr><td>Helena, Mont.</td></tr> <tr><td>Butte, Mont.</td></tr> </table>	Helena, Mont.	Butte, Mont.	Mountain.
Helena, Mont.				
Butte, Mont.				
West of Helena and Butte, Mont.....		Pacific.		

Southern Pacific:

All lines east of Del Rio, Tex.....	Central.
Yuma, Ariz., to Del Rio, Tex.....	Mountain.
West of Yuma, Ariz.	Pacific.
West of Ogden, Utah	

APPENDIX 5.

Sketch maps showing line prescribed between United States standard Eastern and Central time zones. Railroads shown in solid lines carry Eastern time; those in broken dashed lines carry Central time.

APPENDIX 5.

Sketch maps showing line prescribed between United States standard Eastern and Central time zones. Railroads shown in solid lines carry Eastern time; those in broken dashed lines carry Central time.

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APPENDIX 6.

Sketch maps showing line prescribed between United States standard Central and Mountain time zones. Railroads shown in solid lines carry Mountain time; those in broken dashed lines carry Central time.

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SI L. C. C.

APPENDIX 7.

Sketch
train
1900

showing line
1900

United States standard Moun-
tain time in solid lines carry Mountain
carry Pacific time.

No. 9773.

A. A. SMITH COTTON PRODUCT COMPANY

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

Submitted March 5, 1918. Decided October 29, 1918.

Rate on uncompressed cotton in bales from New Orleans, La., to Sweetwater, Tenn., found to have been unreasonable. Reparation awarded.

Ernie Adamson for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is A. A. Smith, engaged in the brokerage business at Atlanta, Ga., under the name of A. A. Smith Cotton Product Company. By complaint filed July 2, 1917, he alleges that the rate of \$1.14 per 100 pounds charged by defendants on 25 bales of uncompressed cotton shipped May 9, 1916, from New Orleans, La., to Sweetwater, Tenn., was unreasonable to the extent that it exceeded 50 cents. We are asked to award reparation and to establish a reasonable rate. Rates are stated in cents per 100 pounds.

The shipment weighed 11,016 pounds and moved over the Louisville & Nashville Railroad to Decatur, Ala., and thence over the Southern Railway to Sweetwater. Charges were collected in the sum of \$125.58 at the joint first-class any-quantity rate of \$1.14, legally applicable. Contemporaneously defendants maintained over the route of movement a commodity rate of 50 cents on uncompressed cotton in bales, carrier's privilege to compress, from New Orleans to Athens, Tenn., an intermediate point 14 miles south of Sweetwater, and to Knoxville, Tenn., 41 miles beyond Sweetwater. The aggregate of the intermediate rates to and from Athens was 66 cents. These departures from the provisions of the fourth section were protected by appropriate applications which were not heard with this case. Effective August 1, 1917, defendants provided in their tariffs that the joint through class rates would not apply on cotton and that thereafter, in the absence of specific commodity rates, the lowest combination of intermediates would apply. The 50-cent

APPENDIX G.

Sketch maps showing line prescribed between United States standard Central and Mountain time zones. Railroads shown in solid lines carry Mountain time; those in broken dashed lines carry Central time.



SI L.C.C.

APPENDIX 7.

*Sketch maps showing line
tain
time*



*United States standard Moun-
solid lines carry Mountain
time.*

Buffalo-Pittsburgh zone, on the basis of an arbitrary of 2 cents per 100 pounds over the rates from Galliver. No joint rates were published from Falco to points in trunk line territory and through rates from Falco to that territory were constructed on the Galliver combinations. The Commission's report, and the order entered thereon, required the carriers to establish rates on yellow-pine lumber, in carloads, from Falco to the Ohio River crossings, to destinations in Kentucky and Tennessee on the Louisville & Nashville Railroad, to destinations north of the Ohio River, east of the Mississippi River and west of and including Buffalo-Pittsburgh territory, and to eastern trunk line territory not in excess of the rates contemporaneously maintained on like traffic from Galliver to the same destinations. In other words, the carriers were required to apply the blanket basis from Falco. Upon supplemental petition filed by the Alabama & Gulf and its receiver, alleging in substance that in compliance with the Commission's order joint rates had been published from Falco on basis of the rates from Galliver but that the carriers had been unable to agree upon divisions, the proceeding was reopened for the purpose of receiving such evidence as would enable the Commission to prescribe just and reasonable divisions of the joint rates thus established. The prayer of the petition is that divisions be established which will give the Alabama & Gulf 3.25 cents per 100 pounds on shipments from Falco to all of the destinations involved. However, at the hearing the Alabama & Gulf asked that it be accorded a division of 4 cents. The Louisville & Nashville is willing to allow the Alabama & Gulf a division of 2 cents per 100 pounds on shipments to Nashville, Tenn., and points beyond, and 1 cent per 100 pounds on shipments to points in Tennessee south of Nashville. Rates are stated in cents per 100 pounds.

In compliance with the Commission's order, the joint rates established from Falco to Louisville, Ky., Indianapolis, Ind., Buffalo and New York, N. Y., which are representative, were 19, 25.5, 32, and 31 cents, respectively. On the basis of an allowance of 2 cents to the Alabama & Gulf, on shipments to Louisville, the Louisville & Nashville would receive 17 cents for its haul from Galliver to Louisville, 692 miles. Shipments from Falco to Indianapolis move over the Louisville & Nashville from Galliver to Louisville and shipments to Buffalo and New York over that line from Galliver to Cincinnati, 802 miles. Allowing the Alabama & Gulf 2 cents and the lines beyond Cincinnati the divisions which they received at the time of the hearing on lumber from other points in the blanket territory, the Louisville & Nashville will receive a division of 15.1 cents on shipments to Indianapolis, 19.5 cents on shipments to Buffalo, and 13.9 cents on shipments to New York.

The Alabama & Gulf is a common carrier and has been operated as such since its construction in 1911. Its equipment consists of three locomotives and two passenger coaches, but apparently one of the locomotives is no longer serviceable. The rails with which its tracks are laid are leased from the Louisville & Nashville. It has been in the hands of a receiver since February, 1914. Its principal tonnage consists of yellow-pine lumber, the movement of which is fairly constant. Formerly it moved from 200 to 250 carloads of naval stores per annum, but, as a result of the territory contiguous to its line having been practically exhausted with respect to naval stores, the movement at the present time is less than 25 carloads per annum. An exhibit filed by the Alabama & Gulf shows that during the six months ended July 31, 1917, which is said to be a representative period, it handled 468 carloads of lumber, all of which originated at Falco and 385 carloads of which moved to the destinations here involved. The total operating revenue of the Alabama & Gulf for this period was \$12,954.85, provided its division on the 385 carloads of lumber just mentioned is 2 cents. Based on the 2-cent division its revenue from these shipments was \$4,211.46. Its operating expenses for the same period were \$15,107.18, so that its net operating deficit was \$2,152.33. It is contended by the Alabama & Gulf that it is necessary for it to receive a division of at least 4 cents on shipments to the destination territory under consideration or else it can not continue to operate. On this theory the amount of the Alabama & Gulf's division would necessarily have to be increased in proportion as its traffic or net revenues decrease. The divisions accorded the Alabama & Gulf can not be predicated solely on the amount necessary to insure its successful operation.

Much evidence was adduced with respect to the divisions which the Louisville & Nashville is willing to accord the Alabama & Gulf as compared with the divisions which it accords other originating lines in the same general territory out of joint rates on lumber to the destinations here involved. From points on the Appalachicola Northern, Marianna & Blountstown, Atlanta & St. Andrews Bay, and the Birmingham, Columbus & St. Andrews Bay railroads, short lines which connect with the Pensacola & Atlantic division of the Louisville & Nashville extending from Pensacola through Galliver to River Junction, Fla., the Louisville & Nashville shrinks its junction-point rates 1 cent on lumber to points on its line south of Nashville and 2 cents to Nashville and points north thereof. However, the rates from points on these short lines are made certain arbitraries over the rates from the junction points so that the short lines receive divisions which range from 3 to 6½ cents for hauls ranging from 22 to 102 miles. In no instance does the Louisville & Nashville shrink its rates from

junction points with short lines in Alabama more than 1 cent on shipments to points south of Nashville and 2 cents on shipments to Nashville and points beyond. But this is not the situation in the western portion of the blanket. The Louisville & Nashville participates in the blanket basis of rates from points on the Gulf & Ship Island; the Mississippi Central; the New Orleans Great Northern; the Gulf, Mobile & Northern; and the line of the Pascagoula Street Railway & Power Company. From points on these connecting lines it shrinks its junction-point rates 7, 9, 7, 6, and 3 cents, respectively. The Louisville & Nashville insists that the circumstances and conditions which prompted it to allow the lines just named divisions in excess of those which it is willing to accord the Alabama & Gulf are entirely different from those obtaining in connection with the latter line. It is insisted that in considering the divisions of the rates from points in Mississippi Valley territory it should be borne in mind that the Louisville & Nashville is not the rate-making line from this territory; that its routes therefrom are circuitous; that each of the lines above named have two or more trunk line connections; and that in order to participate in the lumber traffic from points on connecting lines in this territory, it must allow the initial lines divisions equal to those accorded them by competing trunk lines with shorter routes to the destination territory involved. This is illustrated as follows: The Gulf & Ship Island extends from Gulfport, Miss., the junction with the Louisville & Nashville to Jackson, Miss., at which point it connects with the Illinois Central Railroad. The distance from Jackson to Evansville, Ind., for example, is 513 miles in connection with the Illinois Central, while the distance from Gulfport in connection with the Louisville & Nashville is 710 miles. The Illinois Central allows the Gulf & Ship Island a division of 6 cents and the Louisville & Nashville must make the same allowance on shipments via Gulfport or else relinquish the business. Again, the line of the Pascagoula Street Railway & Power Company extends from Pascagoula, Miss., at which point it connects with the Louisville & Nashville, northward 6 miles to Moss Point, Miss. The Mobile & Ohio Railroad in connection with the Alabama & Mississippi Railroad, which extends from Vinegar Bend, Ala., where it connects with the Mobile & Ohio, 76 miles to Pascagoula, established the blanket basis from points on the line of the Pascagoula Street Railway & Power Company and allowed the originating line a division of 3 cents. In order to meet this competition the same basis was established by the Louisville & Nashville. It is also shown that the Gulf & Ship Island, the Mississippi Central, and the New Orleans Great Northern each have approximately five freight cars per mile of road and contribute a fair share of the cars in which the lumber from points on these

lines move. As above shown, the Alabama & Gulf does not own any freight cars. The Louisville & Nashville earnestly insists that the divisions which it allows the Gulf & Ship Island and other originating lines in Mississippi Valley territory result from strong competitive conditions, as above shown, which do not obtain as to the Alabama & Gulf, and therefore do not afford a proper standard whereby to measure the divisions which should be accorded the Alabama & Gulf.

Exhibits were submitted by the Louisville & Nashville showing the divisions received by various short lines, connecting with trunk lines other than the Louisville & Nashville, on lumber to the destinations involved. It was shown, for example, that the Flint River & Northeastern, the Georgia Coast & Piedmont, and the Ocilla, Pinebloom & Valdosta railroads, short lines operating in the southern portion of Georgia and connecting with the Atlantic Coast Line Railroad, receive divisions of 2, 2.5, and 2.5 cents, respectively, for hauls of 24, 27, and 89 miles.

With respect to the rates to central freight association and eastern trunk line territories, the Louisville & Nashville urges that the division which the Commission prescribes for the Alabama & Gulf should be prorated between the Louisville & Nashville and the lines north of the Ohio River on a revenue basis. It is urged that the more favorable traffic and transportation conditions north of the Ohio River preclude the lines north of the river from demanding higher proportions in the divisions of joint rates for a given haul than accrue to lines south of the river for a like haul; and that if the Louisville & Nashville is compelled to shrink its rates from Galliver 2 cents or more on lumber from Falco to points north of the Ohio River, it will receive considerably less, in proportion, than its northern connections. None of the lines operating north of the Ohio River was represented at the hearing. It appears that in all instances where the blanket basis applies from points on short lines like the Alabama & Gulf, their trunk line connections shrink their proportions to the Ohio River in an amount equal to the division accorded the short line. However, the record in this case affords no basis for determining what would be fair divisions as between the Louisville & Nashville, on the one hand, and its northern connections, on the other. Therefore, only the division of the Alabama & Gulf, to which most of the testimony was directed, will be prescribed.

Upon all the facts of record the Commission should find that 3 cents per 100 pounds is a reasonable division to the Florida, Alabama & Gulf Railroad Company out of the joint rates heretofore prescribed by the Commission on yellow-pine lumber, in carloads, from Falco to the Ohio River crossings, to destinations in Kentucky and Tennes-

see on the Louisville & Nashville Railroad, to destinations north of the Ohio River, east of the Mississippi River and west of and including Buffalo-Pittsburgh territory, and to eastern trunk line territory, this division to take effect as of June 30, 1917, the effective date of the Commission's order prescribing such joint through rates.

Effective June 25, 1918, the rates prescribed by the Commission were increased by the Director General of Railroads and the increased rates are now in effect. The order of the Commission fixing the division of the Alabama & Gulf should therefore be made to cover only the period from June 30, 1917, to June 24, 1918, inclusive.

CLARK, Commissioner:

The foregoing report proposed by the examiner was served upon the parties. The Louisville & Nashville Railroad Company presented no objections thereto. The Florida, Alabama & Gulf Railroad Company on oral argument contended that the division prescribed should apply to shipments that moved prior to the effective date of our order prescribing the joint rates. Manifestly in fixing divisions of rates prescribed by us we can not go back of the effective date of our order prescribing the rates the divisions of which are before us for determination.

The report and conclusions of the examiner are adopted by the Commission and an order will be entered accordingly.

DANIELS, Chairman, concurring:

The foregoing report deals only with the question of divisions. Assuming the findings of the Commission in the original report were sound, I agree that 3 cents is a reasonable division to the Alabama & Gulf out of the joint rates prescribed from Falco and that the period for which the division is made to apply is the proper period. However, after a reexamination of the record, I am convinced that we erred in the original proceeding in requiring the establishment of the blanket basis from Falco. The law does not impose upon a carrier the duty in all cases to give to points on a connecting independent railroad the same rates to markets that it gives to points on its own branch lines in the same region, and the mere fact that the Louisville & Nashville refused to extend to Falco its Galliver rate applying from points on its own branch lines did not give to points on the branch lines of the Louisville & Nashville an undue preference or subject shippers at Falco to undue prejudice. While the actual transportation service may be substantially the same from Falco as from points on the branch lines of the Louisville & Nashville, the necessary additional cost of separate organization and separate billing clearly warrants a slightly higher charge in the case of the two-

line haul from Falco. The facts here are entirely different from those in *Ladd & Co. v. Gould Southwestern Ry. Co.*, 36 I. C. C., 179, and *Joint Rates with the Washington Western Railway*, 41 I. C. C., 649, cited in the original report. In those cases it was shown that the line-haul carriers serving the originating territory applied the blanket basis not only from points on their own branch lines but also from points on independent short lines, while in the instant case it was shown that in no instance does the Louisville & Nashville apply the blanket basis from points on short lines similar to the Alabama & Gulf.

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INVESTIGATION & SUSPENSION DOCKET No. 1159.
PHILADELPHIA HAY AND STRAW DELIVERIES.

Submitted June 12, 1918. Decided October 21, 1918.

Proposed withdrawal of the facilities of the Keystone Elevator & Warehouse Company at North Philadelphia, Pa., as a delivery point for hay and straw found justified. Order of suspension vacated.

Henry Wolf Biklé for respondents.

Chester N. Farr, jr., and William A. Glasgow, jr., for protestants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

By schedules filed to take effect February 6, 1918, the respondent Pennsylvania Railroad Company proposed to eliminate the facilities of the Keystone Elevator & Warehouse Company, of which Harvey C. Miller is president, at North Philadelphia, Pa., as a delivery point for hay and straw. The schedules were filed under authority of Fifteenth Section Order No. 125, of November 20, 1917, without formal hearing. Upon protest by L. F. Miller & Sons, wholesale dealers in hay at Philadelphia, and others, the schedules were suspended until December 6, 1918.

Under the present schedules receivers of hay and straw billed to Philadelphia may specify delivery on team tracks, private sidings, or any of three warehouses employed as delivering agents by respondent, one at North Philadelphia, another at Thirty-first and Chestnut streets, Philadelphia, and a third at Front and Berks streets, Kensington, Pa. Carload shipments of hay and straw consigned to any of these warehouses are unloaded by the warehouse company into the warehouse. The warehouse company holds such shipments for delivery to the consignee as agent for the carrier for the period of the free time, and receives an allowance from the carrier for the services performed by it. No charge is made by the carrier to the shipper for the unloading. After the expiration of the free time the lessee warehouse company as warehouseman holds the property for the owner of the goods and exacts storage charges therefor, which are not published. At the hay warehouses dealers and their customers have an opportunity to inspect the hay or straw, have it weighed, and haul it away. The advantages of this service have resulted according to protestants' witnesses in an increase in the trading conducted at the warehouses.

The respondent leases a portion of its warehouse at North Philadelphia, the smallest of the three, to the Keystone Elevator & Warehouse Company for the handling of hay, straw, and other commodities, and more than one-half of it to the Adams Express Company for the handling of express. It desires to discontinue its lease to the warehouse company in order to allow the express company the use of the entire building for its traffic. The item under suspension refers to hay and straw alone because formerly the tariffs expressly restricted deliveries of hay and straw at Philadelphia to the three warehouses referred to, but did not and do not contain a like restriction as to any other commodity. The express tonnage is about three times the freight tonnage handled in the portion leased to the warehouse company and has increased to the point of congestion.

The protestants oppose the abolition of these voluntarily established facilities and urge that the discontinuance of the North Philadelphia warehouse will result in undue prejudice against that part of the city in the vicinity of the Keystone warehouse if the respondent continues to maintain such facilities at the other two warehouses.

The respondent replies that under the proposed change competitors will possess no advantage not available to protestants, and that if the facilities at the other warehouses should be discontinued, following an alternative order of this Commission, the protestants would not be benefited. It is testified that about as much hay and straw as respondent handles is received at Philadelphia over the Philadelphia & Reading Railway, and unloaded by consignees on team tracks; and that under the proposed change team-track facilities, similar to those furnished by the Philadelphia & Reading, will be available on respondent's line. It is also insisted that there is no duty upon respondent to unload carload freight without charge, a service which is performed at practically no other point on its line, except Baltimore, Md.

Passing other contentions of respondent, we find that the proposed discontinuance of the facilities of the Keystone warehouse as a delivery point for hay and straw, in carloads, has been justified. An order vacating the order of suspension will be entered.

No. 9661.

MAYFIELD & GRAVES COUNTY COMMERCIAL CLUB
v.
ALABAMA & VICKSBURG RAILWAY COMPANY ET AL

PARTS OF FOURTH SECTION APPLICATION No. 2045.

Submitted March 2, 1918. Decided October 29, 1918.

1. Rates on cotton factory products from points in Carolina, southeastern, and interior Mississippi Valley territories to Mayfield, Ky., not shown to have been unreasonable but found to have been unduly prejudicial to Mayfield.
2. Fourth section matters not determined upon the record in this case.

L. F. Orr for complainant.

R. Walton Moore and *Frank W. Gwathmey* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

The Mayfield & Graves County Commercial Club alleges that defendants' rates on cotton factory products to Mayfield from points in Carolina, southeastern, and interior Mississippi Valley territories are unreasonable and also unduly prejudicial to the advantage of Paducah, Ky., St. Louis, Mo., Milwaukee, Wis., Cairo and Chicago, Ill., and various interior points in southern Illinois. The Commission is asked to prescribe rates to Mayfield not in excess of the present rates to Paducah. Most of the evidence adduced with respect to the alleged violation of section 8 relates to the rates to Mayfield as compared with those to Paducah.

Mayfield, with approximately 7,000 inhabitants, is a local station on the Illinois Central Railroad 23 miles south of Paducah. There are two large mills at Mayfield which manufacture clothing for men and boys. These mills buy cotton piece goods in considerable quantities and it was primarily on their behalf that this proceeding was instituted. Paducah, with approximately 25,000 inhabitants, is situated on the south bank of the Ohio River. It is served from the south by the Illinois Central Railroad and the Nashville, Chattanooga & St. Louis Railway. There are no clothing factories at Paducah.

Rates on cotton factory products from the points of origin to Mayfield are, with few exceptions, made by combinations of commodity rates to Paducah and fourth-class rates, governed by the southern classification, beyond. Charlotte, N. C., Columbia, S. C., Atlanta, Ga., Birmingham, Ala., and Chattanooga, Tenn., are selected as representative of points in the originating territories, and the following table, using short-line distances, illustrates the situation which complainant urges is unreasonable and prejudicial. Rates are stated in cents per 100 pounds and apply on any quantity.

To—	From Charlotte.		From Columbia.		From Atlanta.		From Birmingham.		From Chattanooga.	
	Miles.	Rate.	Miles.	Rate.	Miles.	Rate.	Miles.	Rate.	Miles.	Rate.
Mayfield, Ky.....	609	81	633	75	414	71	303	71	277	62
Paducah, Ky.....	632	59	656	53	437	49	328	49	300	40
St. Louis, Mo.....	793	60	817	57	598	50	474	50	461	45
Chicago, Ill.....	831	65	855	55	746	55	698	55	609	50
Milwaukee, Wis.....	916	68	940	58	831	58	783	58	694	53
Indianapolis, Ind.....	637	65	661	55	552	55	504	55	415	50
Cairo, Ill.....	675	59	699	53	480	49	331	49	343	40
Cartersville, Ill. ¹	703	70½	727	64	508	60½	397	60½	371	55½

¹ Represents interior southern Illinois points.

The Nashville, Chattanooga & St. Louis Railway has its own rails from Atlanta to Paducah, and traffic from southeastern and Carolina territories to Mayfield generally moves over this line to Paducah, at which point it is delivered to the Illinois Central. There is a shorter route from Atlanta through Martin, Tenn., via which Mayfield is intermediate to Paducah, but this route is seldom used, although the rates are the same as the rates applicable over the route first described. Traffic from interior Mississippi Valley territory to Paducah moves through Mayfield. However, there is no movement of cotton factory products from the latter territory to either Mayfield or Paducah.

Complainant's evidence in support of the allegation of unreasonableness consisted principally of general statements. Its contentions in this respect rest substantially upon the existence of lower rates for greater distances to points on and north of the Ohio River. Mention is made of the fact that transportation to points north of the river involves expensive river crossings, and at the more important points, some of which are shown in the above table, the terminal expense is said to be considerably greater than at Mayfield.

Witnesses representing the two Mayfield clothing factories say that their principal competitors are located at St. Louis, Mo., Evansville, Ind., Louisville, Ky., Cincinnati, Ohio, Memphis and Nashville, Tenn., Cairo and Chicago, Ill., and New York, N. Y.; that most of their output is sold in the south and southeast; that the more

favorable rates on cotton factory products to the competing points gives those points such an advantage in marketing their goods that it threatens Mayfield as an industrial center; and that there are no circumstances entering into the manufacture of clothing at Mayfield which counterbalance the preference arising from the rate inequalities.

The manufacture of cotton factory products in the southeast is confined principally to Alabama, Georgia, the Carolinas, eastern Tennessee, and southern Virginia. About 25 years ago the lines serving this territory began to direct their efforts strongly to the development of the cotton manufacturing industry. It became necessary to accord the southern mills northbound rates which would permit them to compete with New England mills in the territory bordering and north of the Ohio River, and a basis of rates was adopted by which the rate from Atlanta to Chicago would equal the rate from the New England mills taking the Boston rate. The Boston rate was the same as that from New York to Chicago. Rates to other points north of the river were based on a percentage scale of the New York-Chicago rate.

Defendants assert that the rates to Mayfield made by combinations on Paducah give Mayfield the advantage of the very low commodity rates to Paducah, instead of the normal class basis. At the time of the hearing the rate from Boston to Cincinnati was 50.5 cents. The rate from Atlanta and points in the Atlanta group, which is fairly illustrative of the rates from southeastern territory, to Cincinnati, was and is 49 cents. Because of competitive conditions which have necessitated a parity in the rates from Atlanta to the several river crossings, the rate to Paducah is made 49 cents, which, for the reason stated, is lower than the rate from Boston to Paducah. The fourth-class rate from Paducah to Mayfield is 22 cents, making the through rate from Atlanta 71 cents. Rates from Carolina territory are made with a fixed relationship to the Atlanta rate and are generally 10 cents higher, except that from a few points bordering the Atlanta group the differential is 5 cents.

Defendants argue that cotton factory products are essentially class traffic; that their value is much higher than the general average of freight moving in the south; and that the movement of cotton factory products is generally in less-than-carload quantities. In the western classification the rating is first class; in official classification, rule 25; and in southern classification, as stated, fourth class. The fourth-class rating in the southern classification is said to have been prescribed for the purpose of encouraging and aiding the development of the cotton mill industry in the south.

For the purpose of showing that the rates in issue are intrinsically reasonable, defendants compare them with rates on cotton factory

products between points in the south; from Ohio River points to southern points; and from St. Louis to points in Arkansas, Louisiana, and Oklahoma. It is not necessary to discuss these exhibits in detail. It is sufficient to say they tend to show that the rates assailed are not unreasonable.

Notwithstanding this showing by defendants there appears to be an excessive spread between the rates to Paducah and those to Mayfield which is disadvantageous to Mayfield. This disadvantage can not be justified by the efforts of defendants to stimulate and promote industries in another section of the south by establishing extremely low rates to Paducah while Mayfield is subjected to rates which are 22 cents higher. In *Mayfield & Graves County Commercial Club v. B. & O. R. R. Co.*, 48 I. C. C., 45, we considered joint class rates from trunk line territory to Mayfield, which were alleged to be unreasonable and unduly prejudicial. These joint class rates were composed of the class rates to and from Paducah, and, except for the fact that commodity rates are in effect from the southern territory to Paducah, the bases of constructing the through rates are alike. In that proceeding we found that the through rates, including those on cotton piece goods, were not unreasonable but were unduly prejudicial to Mayfield to the extent that they exceeded the rates contemporaneously in effect to Paducah by certain definite amounts, 18 cents being prescribed as a maximum for fourth class. The general character of that case is not unlike the present one.

In *Mayfield & Graves County Commercial Club v. I. C. R. R. Co.*, 49 I. C. C., 419, we found that the rate on uncompressed cotton in less than carloads from Marietta, Ga., to Mayfield was unreasonable to the extent that it exceeded 75 cents. That commodity takes a rating of first class. The rate assailed was a combination of a commodity rate of 50 cents to Paducah and a first-class rate of 37 cents beyond.

We find that the rates assailed are not shown to have been unreasonable but that they were unduly prejudicial to Mayfield to the extent that they exceeded by more than 18 cents per 100 pounds the rates contemporaneously in effect on like traffic from the points of origin involved to Paducah.

There was assigned for hearing in connection with this proceeding that portion of Fourth Section Application No. 2045, filed by the Illinois Central Railroad Company, wherein authority is sought to continue to charge for the transportation of cotton factory and mill products from points in southeastern, Carolina, and interior Mississippi Valley territories to Paducah rates which are lower than rates contemporaneously maintained on like traffic to Mayfield and other intermediate points. Some evidence was submitted by de-

fendants with respect to this situation. However, the Illinois Central, which is the only line serving Mayfield, is not a controlling, or even an important, factor in the rate adjustment on these commodities. The rates to Mayfield and Paducah are a part of the general scheme of rates from the origin territories involved to points on and north of the Ohio River and the intermediate territory south of the river. Other markets and carriers are vitally interested in the adjustment, and the fourth section issue presented is too broad to be determined upon the meager record in this case. We accordingly make no finding relative to the fourth section application, reserving it for consideration upon a more comprehensive record.

ANDERSON, *Commissioner*:

The foregoing report proposed by the examiner was filed in the record and served upon the parties. Exceptions thereto were filed by the complainant. An examination of the record with special reference to the points raised by the exceptions verifies the accuracy of the statements of facts in the examiner's proposed report. Upon consideration of the record, we approve and adopt his proposed report as part of this report.

In the exercise of powers conferred upon the President by the federal control act, approved March 21, 1918, the Director General of Railroads has, by General Order No. 28, as amended, initiated, effective June 25, 1918, rates exceeding those complained of. Rates so initiated are subject to review by us only upon complaint as prescribed in the federal control act.

On August 3, 1918, we made a supplemental announcement in which we said, among other things, that the Director General was a necessary party defendant where the cause of action is as to rates, etc., which, since the filing of the complaint, have been or shall have been increased or changed by order of the Director General under the federal control act, and the relief sought includes an order for the future.

By said supplemental announcement we further stated that complainants desiring to bring in the Director General as an additional defendant should, on or before October 1, 1918, apply for leave to file a supplemental complaint setting forth their cause of action against the Director General, and that failing such application, unless the time is extended for cause shown, complainants will be understood as electing to stand upon the issues as made.

No such application was filed in this case, and the rates initiated by the Director General can not be considered upon the present pleadings. The complaint will be dismissed.

No. 9488.
AURORA, ELGIN & CHICAGO RAILROAD COMPANY
v.
INDIANA HARBOR BELT RAILROAD COMPANY.

Submitted October 5, 1918. Decided October 29, 1918.

Defendant's charges for switching cars to and from the point of connection between its line and complainant's, at Bellewood, Ill., not found to be unreasonable, unjustly discriminatory, or unduly prejudicial. Complaint dismissed.

David J. Peffers, jr., and Robert J. Wing for complainant.

Glennon, Cary & Walker, S. C. Murray, and L. P. Day for defendant.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

The complainant operates an electric railway line extending from Chicago, Ill., to Elgin, Aurora, and other points in northeastern Illinois. Its principal business is the transportation of passengers, but it also does some freight business. At Bellewood, Ill., its line crosses that of the defendant, a steam switching road which extends around the western, southern, and southeastern boundaries of Chicago, its eastern terminus being in Indiana. Defendant's general charges at the time of the complaint and hearing were 1 cent per 100 pounds, minimum 60,000 pounds per car, for switching between industries and connecting lines, and \$3.50 per loaded car and \$1.75 per empty car for switching between connecting lines. For the switching of loaded cars between the connection with complainant's line at Bellewood and other connecting lines or industries, its charge was 1½ cents per 100 pounds, minimum 60,000 pounds per car, which was the local rate between stations or industries. The complaint here considered alleges that this charge is unreasonable and unduly discriminatory and preferential, in violation of sections 1, 2, and 3 of the act. The Commission is asked to prescribe reasonable and nondiscriminatory rates and charges; and the general switching charges of the defendant, exacted from carriers other than the complainant, are alleged to be just and reasonable.

Complainant's road is about 138 miles in length, the principal lines being operated under the third-rail system. Its track is of standard gauge and accommodates railroad equipment in general,

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excepting certain hopper-bottom cars which do not clear the third rail. Complainant has about 30 freight cars, which, however, are not permitted to leave its road. For the year ended December 31, 1917, complainant's freight revenue amounted to about \$40,000, which was about 2 per cent of its total operating revenues. Several villages are served by complainant exclusively. The number of loaded freight cars delivered to complainant by defendant during 1916, according to complainant's records, was 442; according to defendant's 448. During 1917 the number was about twice as great. All of the freight thus transferred is delivered at points on complainant's line. Very few of the cars are returned under load.

Complainant lays stress upon the fact that it is listed in defendant's tariff as an industry and not as a connecting line, claiming that this classification injures its standing as a common carrier and is in some degree responsible for the application of the charges complained of. Complainant alleges further that defendant's action is due to its general policy of nonrecognition of electric lines, as evidenced by a statement said to have been made by one of defendant's officials to the complainant. As a rule, the charges for intermediate switching at Chicago are absorbed by the carrier which delivers the traffic to the switching road. Lower charges by the defendant, it is claimed, would tend to induce the delivering lines to apply proportional rates instead of local rates on traffic destined to points on complainant's line.

In explanation and defense of the charges under attack, defendant alleges peculiarly expensive service in the transfer of cars between its line and that of complainant. Defendant's switching operations may be considered in two general classes—switching of through freight between connecting lines, and switching between connecting lines on the one hand and team tracks or industries on the other. The number of cars handled in industrial switching constitutes about one-fourth of the total. Cars intended for delivery to complainant, on account of their relatively small number, are handled by the engines that make deliveries at industries. On the other hand, interchanged cars, as a rule, are hauled by transfer engines in direct movement from one line to another without intermediate stops for switching. The haul of the interstate traffic from points in Indiana to Bellewood is from 25 to 40 miles. The connecting track at Bellewood is about 350 feet in length and is of such degree of curvature that only certain of the smaller locomotives of defendant can be operated over it. One engine of this class makes daily trips over the line, not, however, for the sole purpose of switching complainant's traffic. Loaded cars can not be permitted to stand on the transfer track; it is therefore necessary that the complainant's motor meet defendant's

locomotive at the transfer point for the purpose of effecting a transfer. In practice, the defendant notifies the complainant in advance of the time of arrival of the locomotive at Bellewood, and the latter endeavors to have its motor on hand at the designated time. According to defendant's testimony, this operating necessity usually, if not invariably, involves delays, due in some cases to the failure of complainant to keep the appointment promptly and in others to the interference of passing trains on one line or the other. Defendant sometimes finds it necessary to leave the car or cars on a siding until a subsequent day. Occasionally, although infrequently, it is found that a loaded car intended for delivery to complainant can not be operated over complainant's tracks; it must therefore be diverted or its lading transferred to another car. Due to these circumstances defendant claims that the switching of complainant's cars is decidedly more expensive than that of switching for its steam connections. The expense of operating a switching engine is alleged to be between \$6 and \$6.50 per hour, and the extra time required in delivering cars to complainant, as compared with deliveries to other connecting lines, at least one hour per car.

Defendant classifies certain short lines of steam railway as "connecting lines," and applies to their traffic interchanged the general charges for switching; but it appears that in every such case the volume of the traffic is much greater than that of complainant. Complainant asserts that the alleged discriminatory practices contribute to reduce the volume of its business.

Under the circumstances shown of record the complaint should be dismissed. The difference in charges is justified by the difference in circumstances affecting the cost of the services rendered in connection with complainant's traffic and that of other connecting lines, respectively. No evidence was adduced in support of the charge of unreasonableness.

MEYER, Commissioner:

The foregoing is substantially the report proposed by the examiner. Exceptions were filed by the complainant and argument was held before the Commission.

In view of the defendant's practice of exacting the same charge for interchange switching from different connecting lines irrespective of differences in the cost of performing the service, a finding that any different treatment of complainant is unjustly discriminatory in violation of section 3 of the act would be justified were it not for the fact that the interchange service with complainant is materially different from that with other connections. The record is inconclusive as to differences in the cost of interchange switching

by defendant with complainant and with other connecting lines. However, the fact is admitted by complainant's witnesses that defendant can not switch cars to and from complainant's tracks in the manner it does to and from the tracks of its other connections, but must rely upon complainant to receive or deliver the cars with its own motor. The resulting delays and the greater difficulty of performing this service constitute an additional source of expense not present in interchange switching between defendant and its other connections. Without a definite showing, therefore, that the cost of this service is no greater than the cost of interchange switching with other of defendant's connections, we can not find that complainant is unjustly discriminated against. We do not regard as determinative the fact that the volume of the traffic is greater between defendant and certain of its connections than between defendant and complainant; nor the fact that complainant is an electric line. Connecting electric lines should be accorded the same service upon like terms under like conditions as connecting steam roads.

Complainant contends that it is at a disadvantage not only because of the higher switching charge to which its traffic is subjected, but also due to the fact that it is classified in defendant's tariffs as an industry instead of a connecting carrier. Complainant alleges that industries are loath to locate on a line classified as an industry instead of a common carrier. This is a matter which is not covered by the terms of the complaint. Obviously, however, any disadvantage resulting from the inaccurate classification of complainant by defendant and other lines only as an industry and not also as a common carrier, in accordance with established practice, is undue and unjustifiable. Defendant should amend its tariff so as to correct this error.

An order dismissing the complaint will be entered.

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No. 10029.
L. STARKS COMPANY
v.
CHICAGO & NORTH WESTERN RAILWAY COMPANY
ET AL.

Submitted July 15, 1918. Decided October 29, 1918.

Charge of \$5 per car per trip for use of refrigerator or other insulated cars loaded with potatoes at Wisconsin points for interstate shipment found to have been legally applicable between April 15 and July 1, 1915, under agent Boyd's tariff, I. C. C. No. A-274, and between April 15 and August 1, 1915, under agent Boyd's I. C. C. No. A-590, but not applicable between those periods, respectively, and October 15, 1915. Complaint dismissed.

O. W. Tong for complainant.

Robert H. Widdicombe for Chicago & North Western Railway Company.

Eugene F. McPike for Illinois Central Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

As amended at the hearing, the complaint presents the single question: Did the effective tariffs provide for the application, during the period from April 15 to October 15, 1915, of a rental charge of \$5 per car per trip on refrigerator or other insulated cars loaded with potatoes at Wisconsin points for interstate shipment? The contention is that such a charge so applied by defendants in connection with shipments to Chicago, Ill., and other interstate points was wholly illegal, whether or not the particular equipment had been ordered by the shipper.

Except in the case of the shipments to Chicago and points not covered by the tariff, the question turns upon the provisions of serial item 60 of supplement No. 36, and reissues, to agent Boyd's tariff, I. C. C. No. A-274, governing the transportation of potatoes and other vegetables. The material provisions in supplement No. 36, effective February 1, 1915, were as follows:

RULES GOVERNING FURNISHING OF HEATER EQUIPMENT TO PROTECT SHIPMENTS
FROM FROST.

The rates named in this tariff, or as amended, on potatoes, straight carloads, * * * cover transportation charges only and do not include any additional service, such as protection of property from frost.

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In order that shipments may be protected from loss on account of frost, shippers shall either provide such protection or request the carriers to do so.

Rule No. 1.—*Cars heated by shipper.*

In case the shipper elects to provide the protection, the following rules (subject to rule No. 3) will apply:

* * * * *

Rule No. 2.—(A) *Cars heated by carrier.*

In case the carriers furnish the protective service hereinafter provided, the following rules and charges therefor will apply:

During the period October 1st to the following April 30th, both inclusive, the carriers will furnish heated car service and will assess the following charges therefor:

* * * * *

Rule No. 3.—*Rental charge on insulated cars.*

When shipper orders a refrigerator or other insulated car to be heated by him or to move without heat, a charge of \$5 per car per trip will be made for use of car and will accrue to the owner thereof.

In supplement No. 42, effective July 1, 1915, and continuing thence throughout the period in question without further change, the rules were rearranged and modified as follows:

RULES GOVERNING THE TRANSPORTATION OF POTATOES AND VEGETABLES.

The rates named in this tariff, or as amended, on potatoes, straight carloads, * * * cover transportation charges only and do not include any additional service, such as protection of the property from frost.

In order that shipments may be protected from loss on account of frost, during period from October 15th to the following April 15th, inclusive, shipper shall either provide such protection (see option No. 1) or request the carrier to do so (see option No. 2). * * *

Option No. 1.—*When protection is furnished by shipper.*

In case the shipper elects to provide the protection, the following will apply:

* * * * *

(e) *Rental charge on insulated cars.*—When shipper orders a refrigerator or other insulated car to be heated by him or to move without heat, a charge of \$5 per car per trip will be made for use of car.

* * * * *

[Option No. 2, which follows, relates to protection furnished by carrier and without further specification of period.]

Effective December 1, 1915, the rules were canceled and the traffic made subject to the rules in western trunk lines' circular No. 12-B, agent Boyd's I. C. C. No. A-618, supplements and reissues.

It is to be observed that, prior to the amendment next above reproduced, the provision for the rental charge was carried in a separate rule, No. 3, with a reference thereto in rule 1, and that the provision introductory of the options (as they were in fact, though not then so called) was not, beyond an indefinite inference which might be

drawn from the mention of protection against frost, limited as to the period of its application.

Complainant cites statements of record on behalf of the carriers in *Protection of Potato Shipments in Winter*, 29 I. C. C., 504, indicative of an intention to apply such a rental charge in connection with shipments from Minnesota and Wisconsin during the winter months only; also, as virtually conclusive of the matter in issue, the finding in *Northern Potato Traffic Asso. v. C. & A. R. R. Co.*, 44 I. C. C., 426, 433, that a \$5 rental charge, published in a supplement to western trunk lines' circular No. 12-B, agent Boyd's I. C. C. No. A-618, effective in April, 1916, to apply in connection with shipments from Minnesota and Wisconsin throughout the year, was a new charge since January 1, 1910, as applicable to the summer months. Of the first point it is enough to say that, whatever may have been the intention of its framers, a tariff is to be construed according to its terms. *Newton Gum Co. v. C. B. & Q. R. R. Co.*, 16 I. C. C., 341; *Bon Marche v. C. R. R. of N. J.*, 21 I. C. C., 195; *Sea Gull Specialty Co. v. Baltimore Steam Packet Co.*, 27 I. C. C., 267. The second point may be dismissed with the statement that the cited finding was predicated wholly upon the record in that case and with reference to the tariffs there drawn in question.

As the provisions under consideration stood prior to July 1, 1915, therefore, there was no definite or ascertainable seasonal limitation upon the applicability of the rental charge; and an interpretation which would recognize an unstable period, measured only by necessity for protection from frost, inevitably a source of disputes between carrier and shipper, manifestly is not to be preferred. Neither before nor after July 1 was the provision for the charge independent of the other provisions of the item; during the earlier period it was made by reference from rule 1 to rule 3, during the later period by arrangement of context, and throughout both periods it was in the nature of things, an element of the option whereunder the shipper undertook the protection of his shipments. During the later period, however, the provision which introduced the options stipulated, by obvious intendment, their exercise in respect of shipments moving between the 15th of October and the 15th of the following April, inclusive, and thus restricted all cognate provisions of the item. As already observed, this was not so prior to July 1.

Shipments not within the purview of the above-mentioned publications were governed by serial item 250 of western trunk lines' circular No. 12-A, agent Boyd's I. C. C. No. A-590, effective April 3, 1915, and supplement No. 3 thereto, effective August 1, 1915. Briefly, the several provisions in those respective issues were essentially similar to the corresponding provisions successively published

in Boyd's I. C. C. No. A-274, above quoted, and what has been said in that connection is equally applicable in this.

It follows that the charge was legally applicable from April 15 to, but not including, July 1, 1915, under Boyd's I. C. C. No. A-274, and from April 15 to, but not including, August 1, 1915, under Boyd's I. C. C. No. A-590, but was not applicable from July 1 and August 1, respectively, to, but not including, October 15, 1915.

In respect of shipments governed by the several publications prior to July 1 and August 1, respectively, defendants introduced in evidence two written orders, dated May 1 and June 1, 1915, signed by complainant's agent at Wild Rose, Wis., for a total of 10 western heater despatch (refrigerator) cars, 7 of which check with a list of shipments attached to the complaint. While it was testified in complainant's behalf that its agents were instructed to order box cars during the summer months, it is not established of record that the insulated equipment was not in fact ordered by the shipper. Proof of shipments during the periods beginning July 1 and August 1, respectively, was not offered, but defendants should promptly refund any outstanding overcharges, with interest.

The complaint should be dismissed.

AITCHISON, Commissioner:

A report in this case containing the foregoing statement of facts and proposed conclusions thereon was prepared by the examiner and served upon the parties. No exceptions were taken thereto. After examination of the schedules involved and upon consideration of all the facts and circumstances of record herein we adopt the findings and conclusions proposed by the examiner. An appropriate order will be entered.

51 I. C. C.

No. 9480.

JONES & DUNN

v.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY
COMPANY ET AL.

Submitted June 6, 1918. Decided October 29, 1918.

Complaint alleging that rates on hardwood lumber in carloads from Jennie, Ark., to Thebes, Ill., and points beyond in central freight association territory are unreasonable, unjustly discriminatory, and unduly prejudicial, dismissed.

J. H. Townshend for complainants.

Henry G. Herbel and *Fred G. Wright* for St. Louis, Iron Mountain & Southern Railway Company and its receiver.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

The following report was proposed by the examiner. The statements regarding rates are as of May 15, 1918.

Complainants are J. M. Jones and A. D. Dunn, copartners engaged in the manufacture of hardwood lumber at Jennie, Ark. In this proceeding they bring in issue the local rate on hardwood lumber in carloads from Jennie to Thebes, Ill., and also the rates on like traffic from Jennie to points in central freight association territory made by combining the separately established rates to and from Thebes. These rates are alleged to be unreasonable and unjustly discriminatory and to subject Jennie to undue prejudice and disadvantage in favor of Arkansas City, Dermott, Blissville, and Furth, Ark. No reparation is asked. Rates are stated in cents per 100 pounds. The lumber rates shown apply on hardwoods, except woods of value.

Since the complaint was filed defendant St. Louis, Iron Mountain & Southern Railway has been absorbed by the Missouri Pacific Railroad Company, hereinafter termed the Missouri Pacific.

Jennie is a local station on the line of the Missouri Pacific extending in a southeasterly direction from McGehee, Ark., to Clayton Junction, La., and is 28 miles from McGehee. Arkansas City is situated on the west bank of the Mississippi River 12 miles east of McGehee and is served by a branch line of the Missouri Pacific and

also by water carriers. Dermott and Blissville are 8 miles and 17 miles, respectively, south of McGehee on the line of the Missouri Pacific extending in a southeasterly direction from McGehee to Lake Charles, La. Furth is approximately 40 miles northwest of McGehee and 13 miles west of Gould, Ark., the junction of the Missouri Pacific and the Gould Southwestern.

In constructing rates on hardwoods to Thebes and points beyond the southwestern producing territory has been divided into various rate groups. The northern boundary of the group which embraces Blissville, Dermott, and Furth is just north of the Arkansas River. The southern boundary of this group, which is also the northern boundary of the group which includes Jennie, extends in a southwesterly direction from a point just south of Arkansas City to include Blissville, thence in a northwesterly direction to a point just north of Baxter, Ark., thence west across the state of Arkansas. The southern boundary of the Jennie group is the Arkansas-Louisiana state line.

Rates on hardwoods from the groups described to points in central freight association territory are generally made by combinations based on Thebes. The differences between the rates to points in central freight association territory from Jennie on the one hand and from the points alleged to be unduly preferred under the present adjustment on the other are due to the difference between the proportional rates from these points of origin to Thebes. No attack is made on the components north of Thebes.

The present local and proportional rates to Thebes from the Jennie group are 16 cents and 15 cents, respectively; from the Blissville group, 15 cents and 13 cents; and from Arkansas City, 13 cents and 11 cents. Prior to May 9, 1916, Blissville and Dermott were grouped with Jennie. Just prior to that date the complaint in *Dermott Land & Lumber Co. v. St. L., I. M. & S. Ry. Co.*, Docket No. 8431, was filed with the Commission, wherein it was alleged that the rates on hardwood lumber from Dermott and Blissville were unduly prejudicial as compared with the rates from Arkansas City. The complaint in that case was dismissed at the request of the parties after the filing of a stipulation by them in which it was agreed that the rates from Dermott and Blissville to Cairo and Thebes, Ill., and St. Louis, Mo., should not exceed the rates from Pine Bluff, Ark. The effect of this was to transfer Blissville and Dermott to the group in which they are now located. At that time the assistant freight traffic manager of the Iron Mountain advised the Commission that the rates from Blissville and Dermott were reduced because the mills at those points could not have continued to operate in competition with mills at Arkansas City unless such reductions had been made.

Complainants market approximately 75 per cent of their output at points in central freight association territory in competition with mills located at Dermott, Blissville, and other Arkansas points north of Jennie. Jennie appears to be the only hardwood producing point in southeastern Arkansas served by the Missouri Pacific from which a proportional rate in excess of 13 cents applies to Thebes. Complainants have lost some business by reason of the lower rates from competitive producing points north of the Jennie group.

Complainants attach much importance to a comparison of the rates assailed with the rates from Furth. They show that the distance to Thebes from Jennie is 10 miles less than the distance from Furth, and that the movement of hardwood lumber to Thebes from Jennie is over a single line, as compared with a two-line haul from Furth. However, the distance to Thebes from Jennie is greater than the average distance from points in the group which includes Furth. In a comparison with blanket rates neither extreme of the group should be considered, but rather a fair average.

On the Missouri Pacific a system of gross and net mileage rates is operative between points in Arkansas on interstate shipments of rough lumber and logs for stacking, dressing, or manufacture. The net rates are charged on rough material to the manufacturing or stacking point. These rates are conditioned upon the products being reshipped by way of the Missouri Pacific within one year from the date of the inbound expense bills. In the event that this and other provisions of the tariff are not complied with by the shipper, the difference between the net rates and the local rates, the latter being higher, is collected. Under this adjustment the net rates from Jennie to Arkansas City and Helena, Ark., plus the rates on the products from the latter points to destinations in central freight association territory result in combinations which are lower than the through rates from Jennie. For example, the net rate on logs or rough lumber from Jennie to Arkansas City is 2.5 cents and the rate on lumber from Arkansas City to Chicago 21.5 cents, aggregating 24 cents, while the through rate from Jennie to Chicago is 25.5 cents. While Jennie is on the same basis as other Arkansas points with respect to the net rates, complainants contend that they are at a very great disadvantage in purchasing logs in competition with their competitors by reason of the through rates from Jennie being higher than the combinations based on the competitive milling points.

The Missouri Pacific challenges the propriety of the comparison of the through rates from Jennie with the combinations made by the use of the net rates and contends that if comparisons of the rates applicable under this adjustment are to be made with the direct-line rates the gross rates and not the net rates should be considered. In

this connection it may be noted that on rough material moving interstate to milling points in the producing territory in question the Missouri Pacific maintains a system of net rates, but the tariffs publishing such rates contain a provision to the effect that, if the through rate from the point of origin of the rough material is less than the combination of the net rate to the milling point plus the rate on the manufactured product beyond, the net rate will be increased sufficiently to protect the integrity of the through rate from the point of origin of the rough material to the destination of the manufactured product. According to the Missouri Pacific, a similar provision for preserving the integrity of the through rates on interstate shipments between points in Arkansas was not incorporated in the tariff publishing such rates for several reasons, one of which was—

to save confusion, the shipper might not know whether the outbound product was going to an interstate or an intrastate destination, and if the state and interstate tariffs applying within the state of Arkansas were not made uniform it would result in hopeless confusion.

The Missouri Pacific contended in its brief that the complaint in this case does not attack the through rates from Jennie to points in central freight association territory, and therefore only the local rate to Thebes may be considered. This objection was not urged at the hearing. The complaint names as defendants lines operating north of the Ohio River, and while the allegations of the complaint could have been more specific, the complaint as presented does attack the through rate from Jennie to points in central freight association territory.

The Missouri Pacific insists that the rates assailed are intrinsically reasonable and submitted numerous exhibits which tend to support this contention. It also cites *Northbound Rates on Hardwood*, 34 I. C. C., 708; *Rates on Lumber from Southern Points*, 34 I. C. C., 652; *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.*, 39 I. C. C., 303; and the other cases wherein the rates here in issue were considered and approved by the Commission.

It is contended by the Missouri Pacific that the conditions obtaining at Arkansas City are materially different from those obtaining at interior Arkansas milling points; that the rates from Arkansas City are very greatly depressed by reason of water competition; and that the rates from this point can not fairly be used as a standard for measuring the rates from the interior points. It urges that any discrimination which may obtain as to Jennie by reason of the lower rates from Dermott and Blissville should be removed by increasing the rates from Dermott and Blissville and not by reducing the rates from Jennie.

By extending the boundary of the group north of Jennie to include Dermott and Blissville, while at the same time failing to accord the same rates to Jennie, the Missouri Pacific created a situation which appears to be unjust. The distance from Blissville to Thebes is only 12 miles greater than that from Jennie. The conditions which prompted the carrier to reduce the rates from Blissville and Dermott apply with equal force with respect to Jennie.

Upon all the facts of record the Commission should find that the rates assailed are not shown to be unreasonable, but that they are, and for the future will be, unduly prejudicial to Jennie to the extent that they exceed or may exceed the rates contemporaneously maintained on hardwood lumber in carloads from Dermott and Blissville to Thebes and points in central freight association territory; and that the undue prejudice found to exist should be removed. It should also be found that the present system of rates under which the rates on hardwood lumber in carloads from Jennie to points in central freight association territory are higher than the combinations based on Arkansas milling points results in undue prejudice and disadvantage to Jennie, and that defendants should maintain for the future from Jennie to points in central freight association territory rates on hardwood lumber in carloads not in excess of the sums of the contemporaneously maintained net rates on logs and rough lumber to other Arkansas points plus the rates on the products beyond to points in central freight association territory.

HALL, *Commissioner*:

The foregoing report was served upon counsel. No exceptions were filed. Upon the record herein we adopt the statements of fact as a part of this report.

In the exercise of power conferred upon the President by the federal control act approved March 21, 1918, the Director General of Railroads has by General Order No. 28, May 25, 1918, as amended, initiated, effective June 25, 1918, rates exceeding those complained of. Rates so initiated are subject to review by us only upon complaint as prescribed in the federal control act.

On August 3, 1918, we made a supplemental announcement in which we said, among other things, that the Director General—

Is a necessary party defendant where the cause of action is as to rates, etc., which since the filing of the complaint have been or shall have been increased or changed by order of the Director General under the federal control act, and the relief sought includes an order for the future limiting said rates, etc., or fixing their relationship to other rates, etc.

It was further stated that in such cases complainants desiring to bring in the Director General as an additional defendant should, on

or before October 1, 1918, apply for leave to file supplemental complaints setting forth their cause of action against the Director General, and that, failing such application, unless the time is extended for cause shown, "complainants will be understood as electing to stand upon the issues as made."

No such application was filed in this case, and the rates initiated by the Director General can not be considered upon the present pleadings.

The complaint will be dismissed.

51 I. C. C.

No. 9177.
EMPRESS COAL COMPANY
v.
OREGON-WASHINGTON RAILROAD & NAVIGATION
COMPANY ET AL.

Submitted March 13, 1917. Decided October 29, 1918.

Rates on coal in carloads from Empress mine, Wash., to Portland, Oreg., and certain other points in Oregon, not found unduly prejudicial.

Edward M. Cousin for complainant and intervener.

A. L. Miller and *Ralph Coan* for intervener.

Blaine Hallock, H. A. Scandrett, Ben C. Dey, and A. C. Spencer for Oregon-Washington Railroad & Navigation Company and Southern Pacific Company.

George Dysart and *C. D. Cunningham* for Eastern Railway & Lumber Company.

TENTATIVE REPORT.

Complainant, a corporation, formerly operated a coal mine known as the Empress mine, in the state of Washington. By complaint filed September 16, 1916, it alleged that defendants' rates on coal in carloads from the Empress mine to Portland and other points in Oregon specified in tariff I. C. C. No. 395 of the Oregon-Washington Railroad & Navigation Company, hereinafter called the Oregon-Washington, were and are unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that they exceeded and exceed the rates contemporaneously applicable from Tono and Mendota, Wash., to the same destinations. Reparation is asked. The Centralia Coal Mining Company, a corporation, which on or about October 1, 1916, succeeded complainant in the operation of the Empress mine, intervened in support of the complaint and asked reparation. Complainant and intervener will hereinafter be referred to as complainant.

The Oregon-Washington and the Great Northern and Northern Pacific railways operate over the same main-line tracks from Tacoma, Wash., to Portland, about 145 miles. Centralia, Wash., is located on the main line, 91 miles north of Portland, and Wabash, Wash., is about 2 miles north of Centralia. The Oregon-Washington maintains a branch line, 6 miles long, extending from Wabash in an easterly direction to Tono. The Centralia Eastern Railroad extends

from Wabash east to Mendota, a distance of 8 miles, with trackage rights over the Northern Pacific from Centralia to Wabash. The Northern Pacific, through the North Western Improvement Company as an intermediary, controls the Centralia Eastern by sole ownership of its stock. The Eastern Railway & Lumber Company, hereinafter called the Eastern, extends about 13 miles in an easterly direction from Centralia and has physical connection with the Oregon-Washington and Northern Pacific at that point. The Empress mine, about 6½ miles east of Centralia, is connected with the main line of the Eastern by a spur track, approximately 1,700 feet long.

Some of the shipments on which reparation is asked moved to Lewiston, Idaho, and others to points on the line of the Portland Railway, Light & Power Company, not a party defendant. The rates to these points are not properly in issue and will not be considered. Most of the shipments were consigned to Portland and moved by way of the Eastern in connection with the Oregon-Washington; the remainder moved over the same route to Portland and thence to destinations on the lines of the Oregon-Washington or Southern Pacific Company.

For some time prior to November 20, 1915, the rate on coal in carloads from Centralia and Wabash to Portland, by way of either the Oregon-Washington or Northern Pacific, was \$1.40 per long ton. Prior to August 1, 1912, a rate of \$1.60 per long ton applied on this traffic from Tono to Portland by way of the Oregon-Washington, and prior to August 5, 1912, also applied from and to these points as a joint rate in connection with the Northern Pacific. Effective August 1, 1912, the main-line rate of \$1.40 per long ton was established from Tono by way of the Oregon-Washington, and from Mendota over the Centralia Eastern and Northern Pacific. On August 5, 1912, it was made effective by way of the Oregon-Washington from Tono in connection with the Northern Pacific and on October 8, 1912, from Mendota by way of the Centralia Eastern in connection with the Oregon-Washington. On November 20, 1915, this rate was reduced to \$1 per net ton from Tono and Mendota over all of the above routes, except that the rate of \$1.40 per long ton was continued in effect from Tono by way of Oregon-Washington in connection with the Northern Pacific. The \$1 rate was at the same time made effective from Centralia and Wabash. This was the rate situation at the time of the hearing. On August 1, 1917, defendants' rates on coal in carloads from Centralia and points taking the same rates to the destinations in question were increased 15 cents per net ton following *The Fifteen Per Cent Case*, 45 I. C. C., 303, 51 I. C. C.

and on June 25, 1918, were further increased as the result of General Order No. 28 issued by the Director General of Railroads. The Eastern does not publish rates of any kind, but in accordance with an arrangement with complainant charges were and are assessed at the rate of 20 cents per long ton, equivalent to approximately 17.9 cents per net ton, for the movement of coal in carloads from the Empress mine to Centralia.

Whether the Eastern is or is not a common carrier is a question that was discussed to some extent of record and upon the presentation of the case. It was organized in 1903 under the general incorporation laws of the state of Washington, primarily with a view to operating a sawmill at Centralia and transporting logs to the mill. Its charter authorized it to construct railroads for conveying logs, lumber, coal, and other products. Apparently under the state constitution and local laws all railroads and other transportation corporations are declared to be common carriers and subject to legislative control, with the right of eminent domain. During 1917 the Eastern carried passengers in a caboose and received a revenue therefor amounting to \$154. It has also carried coal from the Empress mine and another known as the Monarch mine in coal cars secured for the purpose from the trunk lines; it issues no billing but undertakes to bill traffic for the shipper at the junction point; it issues no tariffs and makes no report to this Commission; nor, so far as the record shows, has it adopted other measures required by the act to regulate commerce of common carriers subject to its provisions. Apparently the Eastern is not considered a common carrier by the state authorities. It does not hold itself out as a common carrier; on the contrary it insists of record in this proceeding that it is not a common carrier and therefore is not subject to our jurisdiction. In that connection it appears that its equipment consists only of logging cars, a caboose, and two geared locomotives and that with the suspension of logging operations it suspends any service for the public. Under the circumstances, and in view of the conclusions we have reached on the question of discrimination, we find it unnecessary now to determine whether the Eastern Railway & Lumber Company is or is not a common carrier.

Complainant now has, in substance, through routes, and does not question the reasonableness of the local charges of the Eastern. Coal is produced at Mendota and Tono which is of the same general quality as that produced at the Empress mine, and necessarily comes in competition with it. In fact, the Eastern owns the coal deposits mined at Mendota and leases them to the Mendota Coal Company, which operates the mine at that point. Complainant contends that the maintenance by the Oregon-Washington and its codefendants of

the main-line rate from Tono and Mendota, while refusing to maintain and apply such rate from Empress mine, was and is unduly preferential of complainant's competitors, and that the total rate which it was and is compelled to pay, namely, the combination of the main-line rate and the local charge or rate of the Eastern, was and is unreasonable in comparison with the main-line rate contemporaneously applicable from Tono and Mendota. Other comparisons are offered with a view to showing that a rate of \$1 per net ton from Tono and Mendota is not too low. These comparisons, standing alone, are not sufficient to establish that a rate from Empress mine in excess of \$1 would be intrinsically unreasonable. It was testified that the movement from Tono and Mendota to Wabash involves a water grade haul while the curvatures and heavy grades on the line of the Eastern Railway render operation difficult and necessitate the use of geared locomotives. The \$1 rate in effect to Portland at the time of the hearing did not apply from points on the main line of the Oregon-Washington north of Wabash; for example, from Tenino, Wash., 9 miles north of Wabash, a rate of \$1.10 per net ton applied. Complainant's principal witness testified that it is merely asking for the same rates as are enjoyed by its competitors at Tono and Mendota; and it is apparent from the whole record that complainant is primarily concerned with the relationship of the rates from Tono and Mendota on the one hand, and Empress mine on the other, rather than with the measure of the rates from Empress mine.

On behalf of the Oregon-Washington it was testified that the main-line rate was first made applicable, effective August 1, 1912, from Tono on its own branch line in order to keep that point on a parity with Mendota, to which the Northern Pacific, in connection with the Centralia Eastern, had indicated its intention of extending, and did extend, the main-line rate effective on that date. Subsequently the Oregon-Washington joined with the Centralia Eastern in the establishment of the main-line rate from Mendota. The Northern Pacific is not a party defendant, so that the propriety of the maintenance by that carrier of the main-line rate from Mendota, while failing to maintain such rate from the Empress mine, is not in issue.

A suggestion was made at the hearing, and it is contended by complainant on brief, that defendant's rates from Empress mine as well as the main-line rates applicable from Tono and Mendota to the destinations in question beyond Portland are unreasonable in comparison with the rates from the same points of origin to Portland. It is doubtful whether this issue is properly presented by the pleadings as the complaint assails the rates from Empress mine solely on

the ground that they are higher than the rates from Tono and Mendota, and the evidence introduced is too meager to enable us properly to pass upon this contention.

The Northern Pacific and its subsidiary, the Centralia Eastern, made the rate from Mendota, which is located only on the latter. The Oregon-Washington had to meet that rate in connection with the Centralia Eastern if it was to share in the traffic from Mendota. The Northern Pacific, as has been stated, is not a party defendant. The rate from Tono, on the branch line of the Oregon-Washington, was made to keep it on a parity with that from Mendota. Coal from both reached the main line at Wabash, a point common to both line-haul carriers, and taking the same rate. Complainant is on a spur, 1,700 feet from the Eastern, which hauls complainant's coal to another common point, Centralia. The Eastern publishes no rates and has no tariffs or concurrences on file with us. In the absence of such tariffs or concurrences the Oregon-Washington could not lawfully have published joint rates with the Eastern or absorbed its charges for the haul to Centralia, and, if required to remove a discrimination in favor of Mendota, could have complied only by canceling the joint rate from that point, which would have left the same rate in effect over the Northern Pacific, without benefit to complainant.

We are of opinion and find that the maintenance by the Oregon-Washington of the main-line rate from Tono on its own branch line, while failing to join with the Eastern Railway in the maintenance of such rate from Empress mine, did not constitute undue prejudice to complainant.

We are further of opinion and find that any prejudice resulting to complainant from the maintenance of lower rates on coal in carloads from Mendota to the destinations indicated than were contemporaneously maintained from Empress mine to the same destinations was beyond the power of the Oregon-Washington to control or remove and was not undue prejudice on the part of that carrier. No finding is made as to rates now in effect which were initiated by the Director General of Railroads.

The complaint should be dismissed.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

The foregoing, with certain modifications, is the report submitted by the examiner. On October 7, 1918, the Commission granted a motion filed by complainant and intervener to amend the complaint by making the Director General of Railroads a party defendant and to file a supplemental complaint. Further hearing and argument

also by water carriers. Dermott and Blissville are 8 miles and 17 miles, respectively, south of McGehee on the line of the Missouri Pacific extending in a southeasterly direction from McGehee to Lake Charles, La. Furth is approximately 40 miles northwest of McGehee and 13 miles west of Gould, Ark., the junction of the Missouri Pacific and the Gould Southwestern.

In constructing rates on hardwoods to Thebes and points beyond the southwestern producing territory has been divided into various rate groups. The northern boundary of the group which embraces Blissville, Dermott, and Furth is just north of the Arkansas River. The southern boundary of this group, which is also the northern boundary of the group which includes Jennie, extends in a southwesterly direction from a point just south of Arkansas City to include Blissville, thence in a northwesterly direction to a point just north of Baxter, Ark., thence west across the state of Arkansas. The southern boundary of the Jennie group is the Arkansas-Louisiana state line.

Rates on hardwoods from the groups described to points in central freight association territory are generally made by combinations based on Thebes. The differences between the rates to points in central freight association territory from Jennie on the one hand and from the points alleged to be unduly preferred under the present adjustment on the other are due to the difference between the proportional rates from these points of origin to Thebes. No attack is made on the components north of Thebes.

The present local and proportional rates to Thebes from the Jennie group are 16 cents and 15 cents, respectively; from the Blissville group, 15 cents and 13 cents; and from Arkansas City, 13 cents and 11 cents. Prior to May 9, 1916, Blissville and Dermott were grouped with Jennie. Just prior to that date the complaint in *Dermott Land & Lumber Co. v. St. L., I. M. & S. Ry. Co.*, Docket No. 8431, was filed with the Commission, wherein it was alleged that the rates on hardwood lumber from Dermott and Blissville were unduly prejudicial as compared with the rates from Arkansas City. The complaint in that case was dismissed at the request of the parties after the filing of a stipulation by them in which it was agreed that the rates from Dermott and Blissville to Cairo and Thebes, Ill., and St. Louis, Mo., should not exceed the rates from Pine Bluff, Ark. The effect of this was to transfer Blissville and Dermott to the group in which they are now located. At that time the assistant freight traffic manager of the Iron Mountain advised the Commission that the rates from Blissville and Dermott were reduced because the mills at those points could not have continued to operate in competition with mills at Arkansas City unless such reductions had been made.

Complainants market approximately 75 per cent of their output at points in central freight association territory in competition with mills located at Dermott, Blissville, and other Arkansas points north of Jennie. Jennie appears to be the only hardwood producing point in southeastern Arkansas served by the Missouri Pacific from which a proportional rate in excess of 13 cents applies to Thebes. Complainants have lost some business by reason of the lower rates from competitive producing points north of the Jennie group.

Complainants attach much importance to a comparison of the rates assailed with the rates from Furth. They show that the distance to Thebes from Jennie is 10 miles less than the distance from Furth, and that the movement of hardwood lumber to Thebes from Jennie is over a single line, as compared with a two-line haul from Furth. However, the distance to Thebes from Jennie is greater than the average distance from points in the group which includes Furth. In a comparison with blanket rates neither extreme of the group should be considered, but rather a fair average.

On the Missouri Pacific a system of gross and net mileage rates is operative between points in Arkansas on interstate shipments of rough lumber and logs for stacking, dressing, or manufacture. The net rates are charged on rough material to the manufacturing or stacking point. These rates are conditioned upon the products being reshipped by way of the Missouri Pacific within one year from the date of the inbound expense bills. In the event that this and other provisions of the tariff are not complied with by the shipper, the difference between the net rates and the local rates, the latter being higher, is collected. Under this adjustment the net rates from Jennie to Arkansas City and Helena, Ark., plus the rates on the products from the latter points to destinations in central freight association territory result in combinations which are lower than the through rates from Jennie. For example, the net rate on logs or rough lumber from Jennie to Arkansas City is 2.5 cents and the rate on lumber from Arkansas City to Chicago 21.5 cents, aggregating 24 cents, while the through rate from Jennie to Chicago is 25.5 cents. While Jennie is on the same basis as other Arkansas points with respect to the net rates, complainants contend that they are at a very great disadvantage in purchasing logs in competition with their competitors by reason of the through rates from Jennie being higher than the combinations based on the competitive milling points.

The Missouri Pacific challenges the propriety of the comparison of the through rates from Jennie with the combinations made by the use of the net rates and contends that if comparisons of the rates applicable under this adjustment are to be made with the direct-line rates the gross rates and not the net rates should be considered. In

this connection it may be noted that on rough material moving interstate to milling points in the producing territory in question the Missouri Pacific maintains a system of net rates, but the tariffs publishing such rates contain a provision to the effect that, if the through rate from the point of origin of the rough material is less than the combination of the net rate to the milling point plus the rate on the manufactured product beyond, the net rate will be increased sufficiently to protect the integrity of the through rate from the point of origin of the rough material to the destination of the manufactured product. According to the Missouri Pacific, a similar provision for preserving the integrity of the through rates on interstate shipments between points in Arkansas was not incorporated in the tariff publishing such rates for several reasons, one of which was—

to save confusion, the shipper might not know whether the outbound product was going to an interstate or an intrastate destination, and if the state and interstate tariffs applying within the state of Arkansas were not made uniform it would result in hopeless confusion.

The Missouri Pacific contended in its brief that the complaint in this case does not attack the through rates from Jennie to points in central freight association territory, and therefore only the local rate to Thebes may be considered. This objection was not urged at the hearing. The complaint names as defendants lines operating north of the Ohio River, and while the allegations of the complaint could have been more specific, the complaint as presented does attack the through rate from Jennie to points in central freight association territory.

The Missouri Pacific insists that the rates assailed are intrinsically reasonable and submitted numerous exhibits which tend to support this contention. It also cites *Northbound Rates on Hardwood*, 34 I. C. C., 708; *Rates on Lumber from Southern Points*, 34 I. C. C., 652; *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.*, 39 I. C. C., 303; and the other cases wherein the rates here in issue were considered and approved by the Commission.

It is contended by the Missouri Pacific that the conditions obtaining at Arkansas City are materially different from those obtaining at interior Arkansas milling points; that the rates from Arkansas City are very greatly depressed by reason of water competition; and that the rates from this point can not fairly be used as a standard for measuring the rates from the interior points. It urges that any discrimination which may obtain as to Jennie by reason of the lower rates from Dermott and Blissville should be removed by increasing the rates from Dermott and Blissville and not by reducing the rates from Jennie.

By extending the boundary of the group north of Jennie to include Dermott and Blissville, while at the same time failing to accord the same rates to Jennie, the Missouri Pacific created a situation which appears to be unjust. The distance from Blissville to Thebes is only 12 miles greater than that from Jennie. The conditions which prompted the carrier to reduce the rates from Blissville and Dermott apply with equal force with respect to Jennie.

Upon all the facts of record the Commission should find that the rates assailed are not shown to be unreasonable, but that they are, and for the future will be, unduly prejudicial to Jennie to the extent that they exceed or may exceed the rates contemporaneously maintained on hardwood lumber in carloads from Dermott and Blissville to Thebes and points in central freight association territory; and that the undue prejudice found to exist should be removed. It should also be found that the present system of rates under which the rates on hardwood lumber in carloads from Jennie to points in central freight association territory are higher than the combinations based on Arkansas milling points results in undue prejudice and disadvantage to Jennie, and that defendants should maintain for the future from Jennie to points in central freight association territory rates on hardwood lumber in carloads not in excess of the sums of the contemporaneously maintained net rates on logs and rough lumber to other Arkansas points plus the rates on the products beyond to points in central freight association territory.

HALL, *Commissioner*:

The foregoing report was served upon counsel. No exceptions were filed. Upon the record herein we adopt the statements of fact as a part of this report.

In the exercise of power conferred upon the President by the federal control act approved March 21, 1918, the Director General of Railroads has by General Order No. 28, May 25, 1918, as amended, initiated, effective June 25, 1918, rates exceeding those complained of. Rates so initiated are subject to review by us only upon complaint as prescribed in the federal control act.

On August 3, 1918, we made a supplemental announcement in which we said, among other things, that the Director General—

Is a necessary party defendant where the cause of action is as to rates, etc., which since the filing of the complaint have been or shall have been increased or changed by order of the Director General under the federal control act, and the relief sought includes an order for the future limiting said rates, etc., or fixing their relationship to other rates, etc.

It was further stated that in such cases complainants desiring to bring in the Director General as an additional defendant should, on
51 I. C. C.

hand, complainant's competitors within the switching limits would be charged but 2 cents, because the switching charges are absorbed by the carrier receiving the line haul. Since June 25, 1918, this difference has been 2 cents because of the increase in the rate established on that day.

Under section 10 of the federal control act we are directed, upon complaint, to enter upon a hearing concerning the justness and reasonableness of so much of any order of the President as establishes or changes any rate, fare, charge, etc., of any carrier under federal control. That section further provides:

In determining any questions concerning any such rates, fares, charges, classifications, regulations, or practices, or changes therein, the Interstate Commerce Commission shall give due consideration to the fact that the transportation systems are being operated under a unified and coordinated national control and not in competition.

The Santa Fe applies the Kansas City basis of rates from complainant's plant only when shipments are destined to points on its own lines. No possible justification can be found, under a unified and coordinated national control for a different treatment when shipments are destined to points on lines other than the Santa Fe. Indeed, it is substantially accurate to say that there are no "shipments destined to points on lines other than the Santa Fe," for federal control makes, for present purposes, all the lines serving Kansas City, except the connecting electric carrier, a single line.

Even prior to federal control it was well settled that a carrier was not justified in attempting to restrict its traffic to movement between points on its own line. In *Lumber Rates from Texas, Louisiana, and Arkansas*, 28 I. C. C., 471, we said:

The broad fundamental question involved in this case is whether the Santa Fe should be permitted to retain for itself the lumber market at points on its line for the benefit of producing points on its line to the exclusion of all others, except under penalty of 3½ cents per 100 pounds. We think this is an exercise of a carrier's rate-making power far too arbitrary and selfish to be permitted under the act. As a matter of sound policy under the law, a carrier is not justified in attempting to restrict its traffic to movement between points on its own line. Through rates are published from lumber-producing points on the Santa Fe to points of consumption on other lines allowing free movement at competitive rates; and, similarly, the Santa Fe should maintain competitive rates from connecting lines wherever it is possible to do so without loss.

Obviously under federal control that doctrine obtains new force. It must be extended to its logical and practical limits. See *Willamette Valley Case*, *supra*.

As stated above, the provisions for the absorption of switching charges in the tariffs of the various carriers are not uniform: Some of the carriers provide for the absorption of switching charges on competitive business only; others provide for the absorption of not to

exceed \$3 per car; and still others will absorb switching charges only to the extent that their revenues will not be less than \$15 per car. Under present conditions and the elimination of carrier competition, when there is absorption of switching charges within a switching district, the provisions therefor should be uniform where similar circumstances and conditions prevail.

Much testimony was directed by both sides to the point whether the service from complainant's plant to interchange tracks of connecting lines with the Kansas City switching district was a line haul or a switching service. In view of our disposition of this case we do not think it necessary to decide that point and others which were urged upon the record.

We find that defendants, by maintaining a basis of charges from producing points at which complainant's competitors are located, within or adjacent to the Kansas City switching district, to points on defendants' lines within 150 miles from Kansas City, lower than they contemporaneously maintain from Turner, unduly and unreasonably prejudice complainant and unduly and unreasonably prefer its said competitors.

We further find that defendants, by maintaining a basis of charges from complainant's plant on shipments to points on lines other than the Santa Fe, higher than they contemporaneously maintain on shipments from that plant to points on the Santa Fe, unduly and unreasonably prejudice complainant.

The evidence of damage resulting to complainant from the undue prejudice found to exist will not warrant an award of reparation.

An appropriate order will be entered.

51 L. O. O.

No. 9229.

J. R. JOHNSTON

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY,
ET AL.

PORTIONS OF FOURTH SECTION APPLICATIONS

Nos. 461, 630, 796, 799, AND 2659.

Submitted May 21, 1917. Decided November 11, 1918.

1. Rates on hides, wool, and tallow, in less than carloads, from certain points in Oklahoma and Texas to Wichita, Kans., not shown unjustly discriminatory, unduly prejudicial, or unreasonable, except in cases where the through rates exceeded the aggregates of the intermediate rates contemporaneously in effect over the routes of movement. In such cases reparation awarded.
2. Rates on hides, wool, and tallow, in less than carloads, from certain points on St. Louis-San Francisco Railway in Oklahoma to Wichita found unreasonable to the extent that they exceeded the rates formerly in effect. Reparation awarded.
3. Authority granted the Chicago, Rock Island & Pacific Railway Company under the fourth section of the act to maintain rates on the commodities mentioned from Ardmore, Okla., to Wichita the same as those contemporaneously in effect over the direct line of the Atchison, Topeka & Santa Fe Railway, and to maintain higher rates from intermediate points east and south of Stuart, Okla., subject to certain conditions. Other fourth section relief denied.

Rogers McCray for complainant.

W. P. Huston for interveners.

Thomas Bond and *T. J. Norton* for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant herein, engaged in the hide, wool, and tallow business at Wichita, Kans., alleges, by complaint seasonably filed, that the rates charged by the defendants on various less-than-carload shipments of hides, wool, and tallow from certain points in Oklahoma and Texas to Wichita were and are unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of the

fourth section of the act. Reparation and the establishment of reasonable and nonprejudicial rates are asked. The Wichita Traffic Bureau, a voluntary association of receivers and shippers of freight at Wichita, intervened November 21, 1916, on behalf of James C. Smith, W. H. Richards, and H. L. Page, copartners, engaged in the hide business at Wichita under the firm name of J. C. Smith Hide Company, and asks reparation on similar shipments within the statutory period. Rates are stated in amounts per 100 pounds.

The complainant and interveners, hereinafter termed complainants, ship in less than carloads from points in Oklahoma and northern Texas to Wichita and thence in carloads, except that dry hides move principally or entirely in less than carloads. Apparently upwards of 90 per cent of their total inbound tonnage is green salted hides. The western classification, which governs, rates dry hides, wool, green salted hides, and tallow, in less than carloads, first, second, third, and fourth class, respectively. For many years two scales of class rates have been published between points in Oklahoma and Kansas, respectively, one known as the standard distance scale and the other as the jobbers' distance scale. The latter is applicable on the first five classes and class A, from specified jobbing points in each state to all points in the other. On traffic to Kansas City, Mo., and Omaha, Nebr., the rate applicable is either the class or commodity rate specifically named from origin to destination, or the combination of the rate under the one or the other of these distance scales from origin to Wichita and the rate beyond, whichever is the lowest. The record indicates that in some instances the defendants have refused to apply the jobbers' rates on shipments from certain intermediate points not designated as jobbing points, contending that the rates apply only from intermediate points on the direct line. The intermediate provision of the tariff is not so limited, and where higher rates have been charged from points intermediate to a jobbing point on the same route the shipments have been overcharged. The defendants should promptly refund such overcharges, with interest.

The rates to Wichita are assailed on three grounds: (1) That the through rates from points in Texas and from some points in Oklahoma exceed the aggregate of the intermediate rates subject to the act; (2) that the rates from many points in Oklahoma are higher than the rates in the opposite direction; and (3) that the rates from certain Oklahoma points are the same as the rates to Kansas City and St. Joseph, Mo., farther distant points enjoying lower carload rates to St. Louis, Mo., Chicago, Ill., and other eastern markets.

The through rates from some of the nonjobbing points in Oklahoma and from certain points in Texas exceed the aggregates of the

intermediate rates, composed of the standard rates to certain intermediate jobbing points in Oklahoma and the jobbers' rates beyond. These fourth section departures were covered by appropriate applications, which were heard with the complaint. The defendants admitted that in such cases the rates assailed were and are unreasonable and expressed willingness to make reparation on past shipments on basis of the aggregate of the intermediate rates contemporaneously in effect over the routes of movement. Those portions of the fourth section applications covering this adjustment will be denied.

Wichita is a jobbing point, and the jobbers' rates apply therefrom to all points in Oklahoma. Conversely, those rates apply from all jobbing and many intermediate points in Oklahoma to all Kansas points. The standard rates, which are materially higher for like distances, apply to or from points not designated as jobbing points that are not intermediate to points that are designated as jobbing points, and also to or from intermediate points when, owing to the decreased distances, such rates are lower than the rates to or from the more distant point that is designated as a jobbing point. The result is that in some cases the northbound, and in others the southbound, rates are the lower, while in still other cases the rates, jobbers' or standard, are the same in both directions.

The rates assailed are compared with lower-distance class rates prescribed by us in *The Missouri River-Nebraska Cases*, 40 I. C. C., 201; lower-distance class rates applying between points in Oklahoma and points in Texas; and lower intrastate rates between points in Oklahoma, but without evidence concerning the movement or other conditions under which they apply. The jobbers' rates were established to enable jobbers of merchandise at points in Kansas and Oklahoma, who receive commodities in carloads and distribute in less than carloads, to compete in those states with jobbers and manufacturers located at the Missouri River cities and other points. The complainants' witness admits that there is no southbound movement of hides, wool, and tallow from Wichita and that as to these commodities the southbound jobbers' rates are paper rates.

It is testified that the complainants compete with dealers at Kansas City and St. Joseph, through which points the inbound less-than-carload rates from various points in southern Oklahoma and the carload rates outbound to St. Louis and Chicago are lower than the corresponding rates in and out of Wichita; but this is principally due to the carload rates being lower from Kansas City than from Wichita. The defendants show that from numerous other points in Oklahoma the less-than-carload rates to Wichita plus the carload rates out to St. Louis, Mo., and Chicago, Ill., are materially lower than the less-than-carload rates to Kansas City or St. Joseph plus the carload

rates to the same destination. This appears to be particularly true of green hides and tallow. The rates on wool from certain points to St. Louis and Chicago are lower in and out of Kansas City than in and out of Wichita, while from certain other points the rates in and out of Wichita are the lower. Wool constitutes a very small percentage of the traffic affected. The difference between the complainants' business and that of a jobber at Wichita is that the complainants receive hides, wool, and tallow in less than carloads and ship out in carloads, while a jobber receives merchandise in carloads and distributes in less than carloads.

The outbound carload rates are not here in issue. But if they were, and if Wichita's disadvantage in some instances were to be conceded, still undue prejudice and disadvantage against a distributing point can not be predicated merely upon the fact that the combination of inbound and outbound rates through that point exceeds the combination available through a competitive distributing point. *Wichita Wholesale Furniture Co. v. A., T. & S. F. Ry. Co.*, 44 I. C. C., 339. Advantages of location, competitive conditions, the volume and flow of traffic, and numerous other considerations must be given due weight in determining the adjustment of rates in and out of different jobbing points. What was said with respect to distributing points applies equally to assembling points.

The complaint is not directed against the jobbers' rates. Nothing said herein should be taken as indicating approval of the use of two scales of class rates in the same territory, one, as its name implies, designed for the use of jobbing centers, and the other for points not so designated in the tariffs.

We find that the rates assailed are not shown to have been unjustly discriminatory or unduly prejudicial, but that, except as next hereinafter stated, they were unreasonable to the extent that they exceeded the aggregates of the intermediate rates subject to the act that were contemporaneously in effect over the respective routes of movement.

On November 27, 1915, the St. Louis & San Francisco Railroad Company, now the St. Louis-San Francisco Railway Company, hereinafter referred to as the Frisco, canceled the application of the jobbers' class rates from all points on its line in Oklahoma, except Ada, Blackwell, Durant, Enid, Muskogee, Oklahoma City, Sapulpa, Tulsa, and West Tulsa, to Wichita and other points in Kansas, and the standard rates applied until July 27, 1916, when the jobbers' scale of rates was restored. The jobbers' rates were again canceled on October 24, 1916, and the standard rates applied until November 24, 1916, when the jobbers' rates were again restored. These tariff changes resulted in increased rates from many points

while the standard rates only were in effect, and complainant made shipments from Cordell, Cement, and Kiefer, Okla., upon which the higher standard rates were applied. The Frisco made no attempt to justify the increased rates which resulted from the cancellations of the jobbers' rates, and we find that the charges collected at the standard rates were unreasonable to the extent that they exceeded the charges which would have accrued on basis of the lower jobbers' rates theretofore in effect.

We further find that the complainant and interveners made shipments, and paid and bore the charges thereon; that they have been damaged to the extent that the charges paid exceed those that would have accrued at the rates herein found reasonable; and that they are entitled to reparation, with interest. The exact amount of reparation due can not be determined upon the present record, and the complainant and interveners should prepare statements showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the date on which the charges were paid, which statements should be submitted to the defendants for verification. Upon receipt of statements so prepared and verified we will consider the entry of an order awarding reparation.

The defendants, with the exception of the Chicago, Rock Island & Pacific Railway Company, hereinafter referred to as the Rock Island, do not ask relief from the long-and-short-haul rule of the fourth section. The Rock Island asks authority to continue rates on the commodities mentioned from stations Ardmore to Olney, Okla., both inclusive, to Wichita, lower than the rates from intermediate points. The short-line distance from Ardmore to Wichita is 273 miles over the Atchison, Topeka & Santa Fe Railway, hereinafter called the Santa Fe. The distance over the Rock Island is 434 miles, or 159 per cent of the short-line distance. Jobbers' rates of 79 cents on dry hides, 67 cents on wool, 55 cents on green salted hides, and 47 cents on tallow, in less than carloads, apply from Ardmore to Wichita over both the Santa Fe and the Rock Island, and under the intermediate provision of the tariff these rates apply from stations on the Rock Island to and including Olney. The highest-rated intermediate points are North Coalgate, Cairo, and Pittsburg, Okla., 347 miles, 341 miles, and 323 miles, respectively, from Wichita, with rates to Wichita of 88 cents on dry hides, 80 cents on wool, 70 cents on green salted hides, and 60 cents on tallow. These are the jobbers' rates applicable from Coalgate, Okla., 348 miles from Wichita. All other points on the Rock Island intermediate to Ardmore are accorded the jobbers' rates applicable from the next more distant jobbing point. The last intermediate point from which the Ardmore rate is exceeded is Waterworks Spur, near Calvin, 251 miles from Wichita, with rates of 83

cents, 72 cents, 59 cents, and 51 cents, on dry hides, wool, green salted hides, and tallow, respectively, which are the jobbers' rates applicable from McAlester, Okla., for 292 miles.

Question has been raised as to our power to consider at this time applications filed by carriers for relief from the provisions of the fourth section of the act to regulate commerce. It is suggested that those provisions are inconsistent with the purpose of the federal control act of March 21, 1918, and the full exercise of power conferred thereby. That act expressly provides that rates initiated by the President "shall be reasonable and just." Under section 4 of the act to regulate commerce certain widely prevalent forms of unjust, unreasonable, and unduly prejudicial charges are condemned and the burden is placed upon the carriers of showing that the situations apparently within the scope of the prohibition are in reality "special cases," justifying the exercise by us of a sound, legal discretion in authorizing departures from the general rules laid down. It is difficult to see how the enforcement of this section can interfere with a unified, coordinated national control, or in any wise hinder the prosecution of the war. As the situations covered by the fourth section can be reached by orders under the first three sections of the act to regulate commerce, the suggestion is equivalent to saying that we can not do in form what it is lawful to do in substance. These applications were filed by the carriers in accordance with the provisions of the act to regulate commerce. During their pendency they extended a protection to those carriers in maintaining rates that would otherwise have been unlawful. The applications were not withdrawn by the Director General when he assumed control of the railroads and he has obtained the benefit of whatever protection those applications may have afforded. In this connection it may be remarked that the Director General sought and obtained from us fourth section relief as an incident to the rates, fares, and charges initiated by him in his General Order No. 28.

The act to regulate commerce remains in full force and effect except in so far as it may be inconsistent with the provisions of the federal control act or other acts applicable to federal control or with any order of the President. There has been no order of the President in the exercise of his war powers declaring that the enforcement of section 4 interferes with the efficient operation of railroads and systems of transportation under federal control. Clearly no such declaration is contained in the act itself and any contention to that effect must be based upon a process of deduction. As to this it is sufficient to say that had the Congress intended to change the effect of section 4 it must be presumed that language appropriate to that end would have been used as was done with the power of suspension under section 15.

Authority will be granted the Rock Island to maintain rates on hides, wool, and tallow, in less-than-carloads, from Ardmore to Wichita the same as the rates contemporaneously in effect over the Santa Fe, and to maintain higher rates from intermediate points east and south of Stuart, Okla., provided that rates from intermediate points do not exceed the corresponding rates in effect for like distances via the direct route of the Santa Fe, that they do not exceed the lowest available combination of rates subject to the act, and do not exceed the present maximum rates from intermediate points so long as the rates from Ardmore are not increased.

No reason appears for the continuance of rates from points on the Rock Island, other than Ardmore, which are lower than the rates from intermediate points, and authority to continue said lower rates will be denied.

An appropriate order will be entered.

DANIELS, *Chairman*, concurring in part:

With the outcome of this decision as embodied in the order accompanying it I have no quarrel. I concur in the finding that reparation is proper, and also in the disposition of the fourth section applications.

It may, I think, be questioned whether the disposition of pending fourth section applications serves any purpose of immediate utility, when the carrier corporations, against which alone the orders run, are impotent, so long as they remain subject to federal control, to change the rates or relationships in question. But assuming that our order will at some indeterminate future date lay upon the carriers a mandate that must be obeyed, or assuming that our finding will be accepted by the Director General as indicating an arrangement which should be made effective during federal control, I can see no objection to the current disposition of these pending applications.

In the deliverance contained in the report construing the federal control act, however, I desire to register my nonconcurrence. The necessity for this construction of the federal control act in the pending case is not apparent to me. It appears to be pure dictum. Even if it were necessarily involved in a determination of this case, to which the Director General is not a party, the benefit of argument thereon by a representative of the Director General might appropriately be obtained before deciding a matter which purports to construe his power, as representative of the President, to initiate rates.

The report recites that—

A question has been raised as to our power to consider at this time applications filed by carriers for relief from the provisions of the fourth section of the act to regulate commerce.

This properly states, as I understand it, the question which may properly be determined in the decision. But the report continues:

It is suggested that those provisions are inconsistent with the purpose of the federal control act of March 21, 1918, and the full exercise of power conferred thereby. Etc.

This raises another collateral question, perfectly distinguishable from the question first mooted. Whether the Commission has the continuing authority now to consider and determine pending applications made prior to federal control, for relief from provisions of the fourth section of the act, is one thing. Whether the Director General in initiating rates under section 10 of the federal control act is bound to observe the rules of the fourth section is a wholly different thing. Upon this latter question, we should have the benefit of argument by counsel, in a case where this issue is involved. I am unable to concur in what I regard as a premature determination thereof.

51 I. C. C.

No. 10081.

RICE POTATO COMPANY

v.

BALTIMORE & OHIO RAILROAD COMPANY ET AL

PORTIONS OF FOURTH SECTION APPLICATIONS

Nos. 1853 AND 1877.

Submitted September 24, 1918. Decided November 15, 1918.

1. Through rates on potatoes, in carloads, from Rice, Minn., to certain destinations, which exceeded and exceed the aggregate of intermediate rates contemporaneously maintained, found unreasonable and illegal.
2. Carload potato rates from Rice to certain destinations found unduly prejudicial to complainant and reparation awarded.
3. Fourth section relief denied.

O. W. Tong for complainant.

B. W. Scandrett for Northern Pacific Railway Company.

B. F. Moffatt for Minneapolis & St. Louis Railroad Company.

R. Walton Moore for Director General of Railroads.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

This case was heard under a rule of procedure providing for service upon counsel for the parties of a proposed report prepared by the examiner, to which exceptions might be taken within 20 days from the date of service. The substance of the report proposed by the examiner is given in the following paragraphs.

Rice, Minn., is an important potato shipping point on the Northern Pacific Railway, 14 miles northwest of St. Cloud, Minn. Complainant, a corporation, with principal office at Foley, Minn., ships numerous carloads of potatoes from Rice to various points in Illinois, Missouri, and Iowa, located in western trunk line territory, and to a lesser extent, to points in Indiana and Ohio, located in central freight association territory. It is alleged that the potato rates from Rice to the various destinations are unreasonable, unduly discriminatory and prejudicial, because improperly adjusted as compared to rates to the same destinations from St. Cloud and Clear Lake, Minn., and other stations in what is commonly known as the Princeton-Cambridge group, hereafter referred to as the Princeton group. Specific de-

partures from the aggregate-of-intermediates and the long-and-short-haul rules of the fourth section of the act are also set out in the complaint. We are asked to prescribe rates for the future no greater than 2 cents above rates contemporaneously maintained from points in the Princeton group and to award reparation to that basis on past shipments. Rates are expressed in cents per 100 pounds.

There were also assigned for hearing portions of Fourth Section Applications Nos. 1853 and 1877, by which the carriers named as parties thereto seek authority to continue to charge for the transportation of potatoes, in carloads, from Rice to points in Illinois, Iowa, Missouri, Ohio, and Indiana, as specified in the complaint, rates which are higher than the rates contemporaneously maintained on like traffic to more distant points.

The Princeton group is wholly within Minnesota and is described as a triangular area embracing all territory lying between Groningen on the north, St. Cloud on the west, and St. Paul and Minneapolis on the south. Joint commodity rates are published from Rice to the points in western trunk line territory but not to the destinations in central freight association territory.

Rice is not situated in a defined group. It practically abuts the Princeton group, being but 14 miles from St. Cloud. The following table shows the rates from Rice and from points in the Princeton group to various selected destinations, also the excess of the former over the latter.

To—	From Rice.	From Prince- ton group.	Differ- ence.
Chicago, Ill.....	19.5	17	2.5
Springfield, Ill.....	25.5	19	6.5
Alton, Ill.....	26.5	20	6.5
Cairo, Ill.....	29.5	24	5.5
Hannibal, Mo.....	25.5	19	6.5
St. Louis, Mo.....	26.5	20	6.5
Cedar Rapids, Iowa.....	22.5	17	5.5
Indianapolis, Ind.....	31.1	23.1	8
Dayton, Ohio.....	31.1	23.1	8
Columbus, Ohio.....	34.3	26.3	8

Rates from St. Cloud to Indianapolis, Dayton, and Columbus are 2 cents higher than the rates shown from the Princeton group.

Complainant's main source of potatoes is the territory between Rice and Foley, the latter point being located on the Great Northern Railway about 15 miles north of St. Cloud. The Northern Pacific Railway serves many potato shipping stations in the Princeton group. The market price on potatoes from the Princeton group is uniform and farmers supplying complainant at Rice demand the same figure as is paid by shippers in that group. With

few exceptions carloads of potatoes are placed in the course of transportation before being sold, and in quoting prices complainant is compelled to meet the identical delivery price made by competitors at the group points. Complainant urges that it is therefore prejudiced and damaged at Rice by rates which exceed the Princeton group rates by more than 2 cents, which difference it insists is quite compensatory to defendants for the additional service performed. All shipments upon which reparation is claimed were sold on a delivered basis and the excess of complainant's rates over those of its competitors was and is absorbed in the margin of profit.

Complainant contends that potatoes should carry rates no higher than those on flour and cites rates on flour from Duluth, Minn., to Chicago and Cairo, Ill., of 15 cents and 18 cents, respectively, as compared with rates on potatoes from Rice to those destinations of 19.5 cents and 29.5 cents. The flour rate from Rice to Chicago is 17 cents. Defendants submit that flour rates in this territory generally are made on the grain basis for commercial and competitive reasons; that grain traffic is considerably greater than potato traffic, which fact warrants lower rates on grain, and particularly, that rates from Duluth to Chicago have been subnormal because of lake-line competition.

Potato shipments, not accorded commodity rates, are given class C rating in western classification. Complainant compares potato rates from Rice with the class C rates from Duluth to the various destinations named in the complaint, contending that those rates should measure the maxima respecting rates from Rice. As previously stated Duluth rates are affected by competition of the lake lines; moreover, Duluth is in western trunk line territory and is served by several direct competing lines to Chicago making low rates, whereas Rice is outside of that territory and is local to the Northern Pacific, a line not essentially a western trunk line carrier.

In *Northern Potato Traffic Asso. v. C. & A. R. R. Co.*, 41 I. C. C., 426, potato rates from the Princeton group to points in western trunk line territory were found to be not unreasonable. Those rates yielded car mile earnings ranging downward from 34.3 cents for 193 miles to 12.16 cents for 633 miles. The average distance from all points involved was 400 miles, the average car mile revenue 18.5 cents, based on the minimum of 36,000 pounds, and the average rate of 19.1 cents, plus the refrigerator rental charge of \$5 per car. From the average rate and distance ton-mile earnings of 9.55 mills are produced. Car-mile earnings under rates attacked in the present case, based on a 36,000-pound minimum and refrigerator-car rental of \$5, range from 27.39 cents for 314 miles to 15.38 cents for 835 miles, the latter applying to a point in central freight association territory having a combination rate basing on St. Paul. The average distance is

614 miles to the 27 destinations; the average ton-mile earnings, 8.77 mills. Defendants contend that the earnings under the rates assailed demonstrate their reasonableness, especially as the commodity is of perishable character.

From Rice to points in central freight association territory no joint rates are published on potatoes and defendants have, with some exceptions, assessed rates to St. Paul, plus the rates thence to destinations. Complainant insists that the through rates should be computed upon Minnesota distance rates, applicable on interstate traffic, from Rice to St. Cloud or Clear Lake, plus the rates from those points to destinations. No tariff provision requires that the through rates shall combine on St. Paul and any charge in excess of the lowest combination of rates subject to the act was and is illegal.

From Rice to the destinations named in western trunk line territory joint rates are published. Combinations of intermediate rates based on St. Cloud, as above described, would produce lower through rates in the absence of the joint rates. The portions of the fourth section applications assigned for hearing did not embrace departures from the aggregate-of-intermediates rule. The joint rates were and are unreasonable to the extent that they exceeded and exceed those intermediate rates.

In *Western Trunk Line Potatoes*, 50 I. C. C., 407, we had under consideration proposed changes in potato rates from Minnesota and surrounding states to points in the south, the southeast, and the east. Two of the five reasons for the proposed adjustment were (1) to establish a more equitable rate relation than existed between points of origin and (2) to iron out inequalities. Potato rates from Rice were to be 2 cents above the Princeton group rates, some reductions being proposed in the rates from Rice and some increases in those from the Princeton group, to effect the relationship. We ordered the schedules canceled because the rates proposed were not consistent or harmonious, certain essential proof was lacking, and rate comparisons were not adequate. The rate relationship proposed between Rice and points in the Princeton group was not, however, condemned in particular. On the record in the present case witness for the Northern Pacific admitted that the rates from Rice were improperly aligned but denied any damage to complainant.

In *Northern Potato Traffic Assn. v. C. & A. R. R. Co.*, *supra*, we found the average distance from the Princeton group to St. Paul to be 65 miles. Rice is 90 miles from St. Paul. From the group points, as well as from Rice, traffic moves through St. Paul to the destinations here concerned. Rice is but 14 miles from the western group boundary and 25 miles farther than the average distance from that group. Two cents, therefore, is a reasonable and non-

prejudicial differential which should be maintained in the potato rates from Rice over and above like rates contemporaneously applicable from the Princeton group.

No defense was offered concerning the fourth section departures embraced in the applications assigned for hearing.

The rates under attack in general are not shown to be unreasonable in that they are excessive. The joint rates, however, which exceeded and exceed the aggregate of the intermediate rates subject to the act contemporaneously maintained, were and are unreasonable to that extent. On shipments to points in central freight association territory, the rates applied were illegal to the extent that they exceeded the lowest combination of intermediate rates subject to the act. The rates from Rice, Minn., to the destinations named were, are, and for the future will be, unduly prejudicial to complainant to the extent that they exceeded or may exceed the rates contemporaneously maintained from points in the so-called Princeton group to the same destinations by more than 2 cents per 100 pounds. Complainant paid and bore the freight charges, and has been damaged to the extent that the rates are found to be unduly prejudicial, and is entitled to reparation with interest. The amount of reparation so awarded will include any damages arising from the collection of the unreasonable and illegal charges hereinbefore referred to. The fourth section applications will be denied to the extent that they are involved.

No exceptions were taken to the findings of fact and conclusions proposed by the examiner, as set forth in the foregoing pages.

Since the hearing of this case, the Director General, in the exercise of powers conferred upon the President by the federal control act approved March 21, 1918, has, by General Order No. 28 as amended, initiated rates effective June 25, 1918, exceeding those assailed.

By supplemental complaint, filed August 21, 1918, the Director General of Railroads was made a party defendant, and the rates so initiated by him are brought into issue.

Complainant in its supplemental complaint alleges that there have been no material changes in conditions since the hearing, save and except that there has been an increase in the rates of 25 per cent under General Order No. 28. The answer of the Director General is a general denial that the complainant is entitled to relief. No further hearing was requested by the complainant or the Director General and none has been had.

Our conclusions with respect to our power to consider at this time applications filed by carriers for relief from the provisions of the fourth section of the act to regulate commerce are set forth in our report in No. 9229, *Johnston v. A., T. & S. F. Ry. Co.*, ante, page 356, decided November 11, 1918, and need not be repeated here.

Upon consideration of the whole record, we approve and adopt the findings and conclusions proposed by the examiner as set forth above as part of this report.

Complainant should prepare a statement showing the details of the shipments on which reparation is found due, in accordance with rule V of the Rules of Practice, also specifying the date on which the charges were paid, and this statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

Appropriate orders will be entered.

No. 9961.

DARBY COAL SALES COMPANY

v.

CHESAPEAKE & OHIO RAILWAY COMPANY.

FIFTEENTH SECTION APPLICATION No. 3402.

Submitted July 19, 1918. Decided, October 29, 1918.

Complainant not found to have been damaged by the maintenance of a lower rate from Elkhorn and Beaver Valley branch of the Big Sandy division of the Chesapeake & Ohio Railway to Newport News, Va., on coal for transshipment by water to points outside the Virginia capes than was contemporaneously maintained from Harold and Pikeville, Ky. Complaint dismissed.

J. H. Briscoe and L. A. Dussoll for complainant.

J. S. Patterson for Chesapeake & Ohio Railway Company.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

Complainant is a corporation engaged in the coal business at Cincinnati, Ohio. It alleges that the rate charged from Harold and Pikeville, Ky., to Newport News, Va., on certain shipments of coal for transshipment by water to points outside the Virginia capes, was unlawful because violative of sections 1, 3, and 4 of the act. The allegation that the rate was violative of sections 1 and 4 was abandoned at the hearing. The only question presented is whether complainant was damaged by the maintenance of a lower rate on coal from certain stations on defendant's road other than Harold and Pikeville, and therefore entitled to reparation.

The shipments were made in March,¹ 1917. The rate charged and legally applicable was \$1.80 per net ton, which, reduced to a per gross ton figure, is \$2.01. Upon the hearing complainant's witness testified that in selling the coal on a delivered basis complainant assumed that the rate was \$1.78 per gross ton, and that it is now out of pocket an amount based on the difference between that rate and the rate of \$2.01 per gross ton. Harold and Pikeville are on the

¹ It was alleged that some of the shipments were made in April, 1917, but this is not clearly established by the record.

Big Sandy division of the Chesapeake & Ohio Railway, which extends in a southerly direction from Catlettsburg, Ky., where connection is made with the main stem of the Chesapeake & Ohio. The rate of \$1.78 was that in effect from stations on the Elkhorn and Beaver Valley branch of the Big Sandy division. These stations are about the same distance from Newport News as Harold and Pikeville. The circumstances and conditions surrounding the transportation from all the points of origin above referred to are substantially the same, they are all in the Big Sandy district and ordinarily are given the same rate. In this particular instance, however, for certain reasons an exception had been made in favor of stations on the Elkhorn and Beaver Valley branch. The lower basis of rates from these stations than from Harold and Pikeville was established in 1914, to move a trial shipment, and, according to defendant, was never requested by shippers at other points in the Big Sandy district. In fact, no special rates have been published to move coal from the Big Sandy district to the points outside the capes, except from stations on the Elkhorn and Beaver Valley branch. The rates charged on the shipments in question from Harold and Pikeville were those applicable to traffic to Newport News proper. Practically all coal from the Big Sandy district goes to the west via Cincinnati or Columbus, Ohio, and only under the most unusual circumstances does any move to the east. The east can be more economically supplied from the Kanawha and the New River districts which are nearer the seaboard than the Big Sandy district and naturally have lower rates. The movement of coal east from the Big Sandy district is against the current of traffic. The facilities at and near Catlettsburg for the interchange of traffic between the Big Sandy division and the main line were constructed with westbound traffic particularly in mind, and the handling of eastbound traffic entails considerable extra service and delay upon a congested portion of defendant's road. Under the orders of the Fuel Administration eastern territory is closed to the Big Sandy producers.

Complainant's witness was unable to state whether or not shippers on the Elkhorn and Beaver Valley branch bid upon the order. It does not satisfactorily appear from the record that the coal was sold delivered on the basis of the rate from the Elkhorn and Beaver Valley branch. Notations appearing on copies of the invoices covering the shipments, which were filed after the hearing and accompanied by an affidavit of complainant's vice president and treasurer, indicate that complainant sold the coal f. o. b. points of origin, and guaranteed the application of a rate of \$1.70 per gross ton. In any event it is clear that complainant was damaged solely because of its error in basing

the sale upon a rate that was not applicable to the traffic. A dismissal of the complaint should be ordered.

Fifteenth section application No. 3402, filed by the Chesapeake & Ohio Railway, seeking the approval of the Commission for the cancellation of the lower rate from the Elkhorn and Beaver Valley branch, which since April 1, 1917, has been \$1.88, was assigned for hearing in connection with the complaint. No protests have been made against the proposal and the foregoing statement of facts respecting the rate should have led to an approval of the application. General Order No. 28 of the Director General of Railroads having intervened to fix the rate for the future no action may now be taken by the Commission on this application.

AITCHISON, *Commissioner*:

The foregoing is the report proposed by the examiner who heard this case. No exceptions to his proposed findings or conclusions have been filed, and from an examination of the record we are convinced that they are sound. The examiner's findings and conclusions are adopted as our own, and an appropriate order will be entered.

51 I. O. O.

No. 9929.¹
CHARLES LAY ET AL.
v.
AMERICAN EXPRESS COMPANY ET AL.

Submitted June 26, 1918. Decided October 29, 1918.

Defendants threatened to withdraw certain cars from the service of shippers engaged in the live-fish business and the shippers applied to the courts and secured injunctions enjoining the respondents, defendants herein, from so doing. Upon complaint praying this Commission to require defendants to cease and desist from taking the cars and to order the defendants to continue to provide such cars; *Held*, That as it does not appear that defendants have actually violated any provision of the act to regulate commerce, the complaint must be dismissed.

George A. True and P. J. Gagen for complainants.

T. B. Harrison for American Express Company.

John M. Sternhagen for New York Central Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

By a duly published joint tariff on file with the Commission, the principal express companies of the country hold themselves out to transport live fish, in carloads, from certain points in the middle and western states to eastern seaboard cities, on condition that the shipper will furnish the necessary cars at his own expense. Neither the shippers nor the express companies own cars suitable for this traffic. The practice has been and is for the shipper and express company to enter into a contract, under the terms of which the express company agrees to procure cars that can be equipped with the necessary tanks for carrying the fish, and the shipper agrees to pay the published rental for the use of the cars, the published mileage charge for the empty movement thereof, and the published rates for the loaded movement of the cars, all of which are on file with the Commission. One of the provisions of these contracts is that the agreement may be terminated by either party giving 60 days' notice thereof in writing to the other party.

The American Express Company operates over the lines of the New York Central Railroad, and has procured from that railroad

¹ This report also embraces No. 9929 (Sub-No. 1), Same v. Same.

a total of eight baggage cars for transporting live fish and has assigned the cars to shippers engaged in the live-fish business. Early in 1917 the New York Central, on account of a large increase in its passenger traffic, became short of baggage cars, and called upon the express company to turn back the eight baggage cars. Thereupon the express company notified the shippers that the contracts for the use of the cars would be terminated on the expiration of the 60-day period provided therein.

The two shippers, complainants here, hold contracts for the use of six of the eight cars. By joint complaints they allege that the express company and railroad company named are threatening to withdraw these cars from their service and to assign them to the service of other shippers. It is averred that the proposed withdrawal of the cars from complainants' service will be a violation of section 1, and that the intended assignment thereof to the service of other shippers will be in violation of sections 2 and 3 of the act to regulate commerce. We are asked to require defendants to cease and desist from taking the cars and from removing the tanks and other equipment which complainants have installed therein, and to order defendants to continue to provide such cars. Answering, the defendants assert that the Commission has no power or authority in the premises.

On June 18, 1917, the express company gave notice to complainants that the contracts for the use of two of the six cars assigned to them would be terminated, effective August 20, 1917. Complainants applied to the common pleas court of Ottawa county, Ohio, for, and were granted, a temporary injunction enjoining the respondents, defendants herein, from taking the cars or removing the tank equipment from the inside of the cars. On or about August 20, 1917, the express company notified complainants that the contracts for the use of the remaining four cars assigned to them would be terminated, effective December 31, 1917. Complainants applied to the United States district court for the northern district of Ohio for, and were granted, a temporary injunction against defendants as to these four cars. Still later the supreme court of the state of New York issued a temporary restraining order to a third shipper as to the other two cars. These injunctions were in full force and effect on the date of the hearing herein. In other words, up to and including the date of the hearing, complainants were using all the cars for which they held contracts, and the record indicates that they held contracts for all the cars which they needed in their business. Furthermore, a witness for complainants admitted that up to and including the date of the hearing defendants had not discriminated against them in the assignment of cars.

As the record fails to show that defendants have violated the act to regulate commerce in any particular, the complaints must be dismissed.

ANDERSON, *Commissioner*:

The foregoing is the report proposed by the examiner, which was served upon the parties. Exceptions thereto were filed by the complainant on the ground that all the issues and evidence based thereon were not fully discussed in the report. As indicated in the report, complainant does not ask us to order carriers to cease and desist from a violation of the act, but prays that we issue an order against the carriers to prevent what is alleged to be a violation of the act. The Commission acts only by virtue of powers conferred by the act. The act does not give us jurisdiction to pass upon the issue here involved. It follows that the conclusion proposed by the examiner is sound, and the proposed report is adopted as a part of this report.

51 I. C. C.

No. 9597.

METROPOLIS COMMERCIAL CLUB ET AL.

v.

ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted October 25, 1918. Decided October 29, 1918.

Upon complaint attacking the rates on logs, lumber, and various lumber commodities specified in the complaint taking the same rates from producing points in the states of Louisiana, Arkansas, Texas, and Oklahoma to Metropolis, Ill.; *Held:*

1. That the rates in effect prior to June 25, 1918, were unreasonable and unduly prejudicial to the extent that they exceeded by more than 1 cent per 100 pounds the rates contemporaneously maintained on the same commodities to Cairo, Ill.
2. That the rates made effective June 25, 1918, and now maintained, are and for the future will be unduly prejudicial to the extent that they exceed or may exceed by more than 1 cent per 100 pounds the rates contemporaneously maintained to Cairo, Ill.
3. Reparation awarded to the Metropolis Bending Company on shipments made prior to June 25, 1918.

J. V. Norman for complainants.

S. W. Moore and *J. M. Souby* for Arkansas Western Railway Company; Texarkana & Fort Smith Railway Company; and Kansas City Southern Railway Company.

W. F. Dickinson, W. T. Hughes, H. G. Herbel, Daniel Upthegrove, E. B. Perkins and *J. R. Turney* for Chicago, Rock Island & Pacific Railway Company; Missouri Pacific Railway Company; and St. Louis Southwestern Railway Company.

R. Walton Moore for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

ANDERSON, *Commissioner:*

The following is, in substance, the report proposed by the examiner, which was served upon the parties. No exceptions thereto were filed. We have somewhat modified the finding suggested by the examiner for reasons which will hereinafter appear.

Metropolis, Ill., is situated on the north bank of the Ohio River, about 11 miles northwest of Paducah, Ky., and approximately 50 miles east of Cairo, Ill. It is served from the north by the Chicago,

Burlington & Quincy and the Illinois Central railroads, hereinafter respectively termed the Burlington and the Illinois Central, and from the south by the Illinois Central and the Nashville, Chattanooga & St. Louis Railway. This complaint, filed April 2, 1917, brings in issue the carload rates to Metropolis on logs and lumber and various lumber commodities specified in the complaint from points in the states of Louisiana, Arkansas, Oklahoma, and Texas, west of the Mississippi River on and south of the line of the Chicago, Rock Island & Pacific Railway, hereinafter termed the Rock Island, from Memphis, Tenn., to El Reno, Okla.; also from points in Arkansas and Oklahoma north of the Memphis-El Reno line of the Rock Island, from which traffic must move by way of that line. These rates are alleged to be unreasonable and also unduly prejudicial to Metropolis to the advantage of Paducah and Cairo. We are asked to require defendants to establish joint rates and through routes on the commodities specified from the points of origin to Metropolis, such rates not to exceed by more than 1 cent per 100 pounds the rates contemporaneously maintained for the transportation of like commodities to either of the alleged favored points. Complainant Metropolis Bending Company, a corporation dealing in lumber and various wooden articles at Metropolis, asks for reparation on shipments made by it under the rates assailed within the statutory period or that may be made during the pendency of this proceeding.

The Rock Island, the Missouri Pacific Railroad, formerly the St. Louis, Iron Mountain & Southern Railway, and hereinafter termed the Iron Mountain, the St. Louis Southwestern Railway, hereinafter termed the Cotton Belt, and the Kansas City Southern Railway were the only carriers that submitted evidence at the hearing. These carriers will hereinafter be collectively termed defendants. Rates are stated in cents per 100 pounds.

Manufacturing and jobbing lumber and various wooden articles is an important business at Metropolis, Paducah, and Cairo. Each draws a portion of its supply of rough material from the producing territory west of the Mississippi River and their products compete in common selling markets. Rates on the commodities specified in the complaint from all points in the originating territory, except from a few points in southern Louisiana and southeastern Texas, to Metropolis are from 4.3 cents to 6.3 cents higher than the corresponding rates to Cairo and Paducah. Joint through rates are maintained to Metropolis from the excepted points in Louisiana and Texas, applicable only through lower Mississippi River crossings in connection with the east-side lines, which rates are 1 cent higher than the rates to Paducah and Cairo. The latter rates are on the basis sought and are not assailed.

With respect to the movement of forest products from and to the points indicated, the principal lines serving the producing territory are the Rock Island, the Iron Mountain, and the Cotton Belt. The Rock Island does not reach Cairo, Paducah, or Metropolis with its own rails. The Iron Mountain and the Cotton Belt operate to Cairo, but reach Paducah and Metropolis only over connecting lines. The adjustment from points on these lines is illustrative of the entire adjustment under consideration. The Rock Island participates in joint rates on these commodities from all producing points on its line to Cairo and Metropolis, and in joint rates to Paducah from Little Rock and points east thereof. The joint rates to Metropolis are based on the Cairo combinations. No joint rates are maintained to Paducah from points on the Rock Island west of Little Rock; the lowest combinations make on Cairo. In all instances where joint rates are in effect to Paducah, they are the same as the rates to Cairo. Joint rates apply from all points on the Iron Mountain and Cotton Belt south of the Memphis-Little Rock line of the Rock Island to Paducah, which rates are the same as the rates to Cairo. From points on their lines west of a line drawn south from Little Rock, no joint rates are in effect to Paducah and the lowest combinations make on Cairo. These two carriers do not participate in joint rates to Metropolis from any points in the producing territory; the lowest combinations make on Cairo or Thebes, Ill., these points taking the same rates, or on Paducah. The joint rates from points on the Rock Island to Cairo, Paducah, and Metropolis apply only through Memphis in connection with the Illinois Central beyond. The joint rates from points on the Cotton Belt and the Iron Mountain to Paducah apply only through Cairo. It should be stated that the joint rates now maintained from points on the Rock Island, the Iron Mountain, and the Cotton Belt to Paducah were not voluntarily established by the carriers, but in compliance with our orders as hereinafter shown. It may be well to note that the Kansas City Southern does not join in the publication of joint rates on these commodities to either Paducah or Metropolis. It does participate in the publication of joint rates to Cairo, applicable only in connection with the Iron Mountain and the Cotton Belt.

The witnesses discussed three routes for hauling forest products from the producing territory to Metropolis—the Memphis route, the Cairo route, and the Goreville, Ill., route. In reaching Metropolis via the Memphis route the Mississippi River is crossed at Memphis and the Ohio River at Paducah. By the Cairo route the Mississippi is crossed at Thebes and the Ohio at both Cairo and Paducah. Traffic moving by the Goreville route crosses the Mississippi at Thebes and moves thence to Goreville over the Chicago & Eastern Illinois

Railroad where it is delivered to the Burlington for transportation to destination.

As above shown, the only available route of the Rock Island from the producing territory to Cairo, Paducah, and Metropolis is through Memphis. The short-line distance from Memphis to Cairo is 170 miles, to Paducah, 166 miles, and to Metropolis, 177 miles.

All traffic from points on the Cotton Belt to Cairo, Paducah, and Metropolis moves through Brinkley, Ark. The Cotton Belt does not reach Memphis with its own line. A contract which it entered into several years ago with the Iron Mountain provides that the Cotton Belt shall deliver to the Iron Mountain at Fair Oaks, Ark., all traffic originating on the Cotton Belt or its connections and consigned to or through Memphis. The contract also provides that the Iron Mountain shall receive 3 cents per 100 pounds for its haul from Fair Oaks to Memphis. The distance to Metropolis from Brinkley over this route in connection with the Illinois Central beyond Memphis is 262 miles; via the Cairo route the distance is 290 miles, and through Goreville, 293 miles. An exhibit submitted by the Cotton Belt shows that the average distance from all lumber-producing points on its line to Metropolis via the Cairo route is 4.5 per cent greater than the average distance by way of Memphis. The distance by way of the Cotton Belt from Brinkley to Cairo is 236 miles, and to Paducah, through Fair Oaks and Memphis, 251 miles. The Cotton Belt routes its Metropolis traffic through Goreville, except from points where the lowest combinations make on Cairo, in which instances the traffic is delivered to the Illinois Central at Cairo.

From seven representative points on the Iron Mountain the average short-line distance to Cairo via the Iron Mountain direct is 372 miles. From the same points the average short-line distances to Paducah and Metropolis through Cairo are 415 miles and 426 miles, respectively, and over the shortest workable routes through Memphis, 376 miles and 387 miles, respectively. The Iron Mountain handles its Metropolis traffic through Cairo or Memphis.

The general adjustment here involved was considered by us in *Paducah Board of Trade v. I. C. R. R. Co.*, 29 I. C. C., 583; *Paducah Board of Trade v. I. C. R. R. Co.*, 37 I. C. C., 719; *Paducah Board of Trade v. I. C. R. R. Co.*, 43 I. C. C., 537, hereinafter referred to, respectively, as the first, second, and third Paducah cases; and *Metropolis Commercial Club v. I. C. R. R. Co.*, 30 I. C. C., 40, hereinafter referred to as the former Metropolis case. Portions of the records in the second Paducah case and the former Metropolis case were filed as evidence in the instant case. It may be well briefly to discuss the cases cited. In the first Paducah case, we found that the rates on logs and lumber from points in Louisiana

and Arkansas on and south of the Memphis-Little Rock line of the Rock Island to Paducah were unduly prejudicial as compared with the rates to Cairo, and that defendants therein which operated west of the Mississippi River should maintain rates on logs and lumber to Paducah from substantially equidistant points or groups in that producing territory no higher than those contemporaneously maintained to Cairo. There was no request for the establishment of joint rates and through routes and, therefore, no order was entered. The complaint in the second Paducah case was subsequently filed, and specifically prayed for the establishment of such through routes and joint rates. We there approved our findings in the first Paducah case and again found that the rates were unlawfully discriminatory, to the prejudice and disadvantage of Paducah and to the preference and advantage of Cairo; and also that the rates to Paducah were unreasonable to the extent that they exceeded the rates then maintained to Cairo. Defendants therein were required to establish and maintain through routes for the transportation of logs and lumber from the producing territory to Paducah, and joint rates applicable via such routes no higher than the rates then maintained to Cairo. Those routes and rates the carriers were given the alternative of establishing by way of Memphis or Cairo. An order was entered in that proceeding giving effect to the findings therein. Subsequently, a petition for rehearing, filed by defendants, was considered and denied. Certain of the initial lines thereupon published rates to Paducah the same as to Cairo, though the west-side lines generally did not concur in those rates, and the rates published were made to apply only by way of southern Mississippi River crossings in connection with the east-side lines. Certain of the west-side lines sought in the United States district court for the western district of Kentucky an injunction against our order, which was denied. *St. Louis Southwestern Ry. Co. v. United States*, 234 Fed., 668. These carriers thereupon established the Cairo basis of rates on logs and lumber to Paducah. Subsequently an appeal was taken to the Supreme Court of the United States, and the decision of the district court was affirmed. *St. Louis Southwestern Ry. Co. v. United States*, 245 U. S., 136. The rates established following the decisions in the first and second Paducah cases were not extended to articles generally carried in the lumber lists of the carriers and the complaint in the third Paducah case was thereupon filed, attacking the rates on various lumber commodities from the same producing territory to Paducah. We there prescribed the same adjustment with respect to these lumber commodities as we had prescribed in the first and second Paducah cases on logs and lumber. In the former Metropolis case, filed subsequently to the decision in

the first Paducah case and prior to the decision in the second Paducah case, we found that the rates on logs and lumber from points in Louisiana and Arkansas on and south of the Memphis-Little Rock line of the Rock Island to Metropolis were unduly prejudicial to Metropolis to the extent that they exceeded by more than 1 cent the rates contemporaneously maintained to Cairo. There was no prayer for the establishment of joint rates and through routes. An appropriate order was entered, whereupon the Iron Mountain and the Cotton Belt petitioned the United States district court for the eastern district of Illinois for an injunction against the enforcement of our order. The injunction was granted on the following grounds: (1) That the evidence before us was not sufficient to support the finding of discrimination; (2) that neither the Iron Mountain nor the Cotton Belt had direct lines to Metropolis, and inasmuch as they did not join with any other line or lines reaching that point in making joint through rates to Metropolis, the maintenance of lower rates by the lines named to Cairo than to Metropolis could not be deemed unjust discrimination or undue preference within the meaning of the act; (3) that we erred, as a matter of law, in failing to give effect to the fact that the Cairo rate, in and of itself, was abnormally low, due to competition of other trunk lines and to competition of other points of origin. *St. Louis, Iron Mountain & Southern Ry. Co. v. United States*, 217 Fed., 80.

It will be observed that the instant case brings in issue rates from points west of a line drawn south from Little Rock, not considered in the cases cited. However, rates from this additional territory are subject to the same conditions which affect the construction and application of rates from the producing territory immediately east of the line drawn south from Little Rock. It should also be noted that the present proceeding differs from the former Metropolis case in that here the question of the intrinsic reasonableness of the rates is presented, and also complainants here pray for the establishment of joint rates and through routes. With these exceptions, the issues here presented are substantially similar to those considered in the prior proceedings.

In addition to the various proceedings above cited, it may be observed that following our decision in the first Paducah case and the former Metropolis case, the Rock Island filed a tariff proposing increases in the rates on logs and lumber from points in this producing territory to Cairo, and named the same rates to Paducah. That tariff was suspended and the rates proposed, together with the rates proposed by other carriers which were in conflict with our findings in the first Paducah case, were considered in *Rates on Lumber from*

Southern Points, 34 I. C. C., 652. The proposed rates were there disapproved, and we adhered to our findings in the first Paducah case.

Defendants insist that our findings in the three Paducah cases and the former Metropolis case were erroneous, and it may be said that they now proceed as if the present case "were one of first impression." The present record, however, adds little to the evidence adduced in the former cases.

Defendants here urge, as in the former cases, that we have no power to compel them to establish joint rates and through routes. This contention is without merit. *St. Louis Southwestern Ry. Co. v. United States*, *supra*. They also urge that they can not, in any event, be guilty of discriminating against Metropolis because their lines do not reach that point. In discussing a similar contention in the case just cited, the Supreme Court said:

They (the west-side lines) have billed traffic via Cairo or Memphis through to Paducah in connection with the Illinois Central, thus reaching Paducah, although not on their own rails. And, thereby, they become effective instruments of discrimination. Localities require protection as much from combinations of connecting carriers as from single carriers whose "rails" reach them. Clearly the power of Congress and of the Commission to prevent interstate carriers from practicing discrimination against a particular locality, is not confined to those whose rails enter it.

While admittedly the Memphis route is the logical and proper route of the Rock Island to Metropolis from the producing territory, the Cotton Belt and the Iron Mountain insist that the proper route for traffic moving via their lines is through Goreville. They emphasize the fact that this route necessitates only one river crossing, as compared with two by way of the Memphis route and three by the Cairo route; also the further fact that they have their own lines from the producing territory to Thebes. In *Rates on Lumber from Southern Points*, *supra*, it was shown by the respondents therein that at some of the crossings it cost the carriers 2.1 cents per 100 pounds to haul lumber across the Ohio River. While the distances to Metropolis by way of Memphis are less than the distances through Goreville, when all the circumstances and conditions are considered it appears that the contention of the Iron Mountain and the Cotton Belt that the proper route for their traffic is through Goreville is well founded.

Rates from the southwest to points north and east of Cairo are generally made by combinations on Cairo or Thebes, and the carriers insist that this is the proper basis for rates to Metropolis. It is further contended that if joint rates are established to Metropolis on the basis asked, other cities located north and east of Cairo and

Thebes will ask that they be similarly favored. Complainants reply that this contention disregards the essential fact that Metropolis is an Ohio River crossing, and that rates to no Ohio River crossing, except Metropolis, are now made on the Thebes or Cairo combinations but are on a lower basis. The fact that other points would seek reductions in their present rates if the rates asked to Metropolis are prescribed affords no basis for denying relief to Metropolis if the present rates to that point are unlawful.

Defendants submitted numerous exhibits intended to show that the divisions which would probably accrue to them if the proposed rates are established would not be compensatory. In this connection it is only necessary to state that the question of divisions is not presented in this proceeding.

Most of the evidence deals with the adjustment to Metropolis as compared with the adjustments to Cairo and Paducah, but in their endeavor to show that the present rates to Metropolis are intrinsically reasonable, defendants submitted exhibits comparing these rates with rates on lumber for similar distances from points in the southwest to destinations in Illinois, Kansas, Oklahoma, and Missouri, and also with rates on like traffic between points in other territories. Considered wholly from the standpoint of distance the rates cited compare favorably with the present rates to Metropolis but are materially higher than the present rates to Cairo and Paducah. Exhibits similar to those here presented were submitted by the carriers in the Paducah cases cited and in *Rates on Lumber from Southern Points, supra*, in support of the contention there made that the rates to Cairo were unduly low. As above shown we found, in effect, that this contention had not been sustained. As lumber from points in the producing territory moves to Metropolis via the Memphis route through Paducah and via the west-side routes the movement to both Metropolis and Cairo is over the same routes in all instances up to Thebes, it appears that the rates to Cairo and Paducah afford a proper standard whereby to measure the reasonableness of the rates to Metropolis.

By way of the Memphis or Cairo routes the distances from the points of origin to Metropolis are only 11 miles greater than the distances to Paducah. In *Paducah Board of Trade v. I. C. R. R. Co.*, 29 I. C. C., 593, a difference of 1 cent per 100 pounds was fixed as reasonable compensation for the additional service northbound in crossing the Ohio River at Paducah. We thus reduced to 1 cent the spread in the outbound lumber rates from Paducah as compared with the rates from Metropolis. By way of the Goreville route the distances from the points of origin in question to Metropolis are only 54 miles greater than the distances to Cairo via Thebes. It is clear that

the present rates to Metropolis are too high as compared with the rates to Cairo and Paducah. We found in the former Metropolis case that the rates to Metropolis should not exceed the rates to Cairo by more than 1 cent per 100 pounds, and there is nothing in the present record that warrants a different conclusion. Indeed the evidence here abundantly confirms the finding made in that case.

Since the hearing the Director General in the exercise of powers conferred upon the President by the federal control act has, effective June 25, 1918, initiated rates higher than those complained of. By supplemental complaint, filed with our permission on September 30, 1918, the Director General was made a party defendant. In said supplemental complaint it is stated:

That since the filing of the original complaint, the Director General, by General Order No. 28, has increased all the rates involved, but no substantial changes have been made in the relationship of rates, and said relationship continues to be unjust and unduly discriminatory against Metropolis.

Complainants make no attack upon the increases provided for in General Order No. 28, but assert the same cause of action against the Director General as was asserted in the original complaint against defendants named therein, and complainants now ask that the Director General be required to establish the relationship of rates which complainants sought in their original complaint.

The answer of the Director General is, in substance, the same as that made by him and reported in *Willamette Valley Lumbermen's Assn. v. S. P. Co.*, 51 I. C. C., 250, and need not be repeated here. The Director General waives further hearing and consents that the evidence heretofore submitted, in so far as the same is relevant and material to the questions now properly at issue, may be considered by us. The case therefore stands for decision upon the record previously made.

It will be observed that the complainant in the supplemental complaint does not attack the intrinsic reasonableness of the rates initiated by the Director General, effective June 25, 1918, and no reparation will be awarded on shipments moving subsequent to that date.

Upon all the facts disclosed we find that the rates assailed were, prior to June 25, 1918, unreasonable and unduly prejudicial to Metropolis to the extent that they exceeded by more than 1 cent per 100 pounds the rates contemporaneously maintained for the transportation of like traffic from the same points of origin to Cairo; and that the present rates are and for the future will be unduly prejudicial to Metropolis to the extent that they exceed or may exceed by more than 1 cent per 100 pounds the rates contemporaneously maintained for the transportation of like traffic from the same points of origin to Cairo. We further find that the Metropolis Bending Company has made shipments as hereinbefore described and paid and bore the charges thereon at the rates herein found unreasonable

and unduly prejudicial; that it has been damaged to the extent that the charges paid exceeded the charges that would have accrued at the rates herein found reasonable; and that it is entitled to reparation with interest on shipments made prior to June 25, 1918. As the amount of reparation due can not be determined from this record, the Metropolis Bending Company should file a statement in accordance with rule V of the Rules of Practice, also specifying the date on which the freight charges were paid, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified, we will consider the entry of an order awarding reparation.

An appropriate order will be entered.

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No. 10005.

BUTTERWORTH-JUDSON CORPORATION ET AL.

v.

ADAMS EXPRESS COMPANY ET AL.

Submitted July 15, 1918. Decided October 29, 1918.

1. The failure of the defendants to accord certain complainants free collection and delivery service on interstate express shipments performed for other shippers in their vicinity in Newark, N. J., results in undue prejudice to such complainants and the locality in which their plants are situated.
2. The defendants having been merged into one operating company, which is not a party to this proceeding, an order directing the removal of the undue prejudice will not be entered upon the present proceedings.

Chadbourne, Shores & Wallace and Louis G. Bissell for complainants.

Branch P. Kerfoot and T. B. Harrison for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

This is a complaint of undue prejudice alleged to result from the refusal of the defendant express companies to accord to the complainants and the locality in which their plants are situated the free collection and delivery service maintained on interstate express traffic elsewhere in the city of Newark, N. J., within certain defined limits. The complainants contend that the circumstances and conditions under which their competitors and competing localities in other sections of Newark receive that service are substantially similar to those that would obtain if a corresponding service were rendered for them, and allege that the defendants' refusal to handle traffic to and from their plants is unjustly discriminatory and unduly prejudicial and subjects them to the payment of unreasonable rates for transportation.

Of the four complainants, three, the Butterworth-Judson Corporation, Columbus Crystal Company, and United Oil & Chemical Corporation, manufacture chemicals or dyes; the fourth, the Balbach Smelting & Refining Company, is engaged in the smelting and refining of ores. Their plants are situated in the southeastern section of Newark, along avenue R, between Doremus avenue and Lincoln highway, and adjacent to the Passaic River, a little over 8 miles from the depots of the Adams and American express companies and

about 1.7 miles farther from the depot of Wells, Fargo & Company. This section of the city of Newark had been but little developed prior to the European war, but during the past four years its growth has been rapid, and it appears now to be an important manufacturing district.

Defendants' tariffs authorize free collection and delivery at industries on Lincoln highway and immediately north of the complainants in the territory bounded by Lincoln highway, Blanchard avenue, and the Passaic River, approximately the same distance from the express companies' depots. This service is also maintained over longer routes to and from industries in the southwestern part of the city in the neighborhood of Weequahic park. A number of industries in the complainants' immediate vicinity are specifically mentioned in the tariffs as entitled to collection and delivery service, among them the Public Service Corporation car house and Ladew Manufacturing Company, on avenue R and Lincoln highway, four-tenths of a mile from the United Oil & Chemical Corporation; the Central Dyestuff & Chemical Company, on Plum Point lane near Allegheny avenue, and about one-tenth of a mile via Allegheny avenue to the shipping department of the Butterworth-Judson Corporation, and several industries on Balls lane, near the private road leading into the grounds of the Balbach Smelting & Refining Company. It thus appears that collection and delivery service is accorded to industries and shippers immediately to the north, west, and south of the complainants and all within a very short distance of their plants. This service is also performed by Wells, Fargo & Company on shipments of bullion, or gold and silver precipitates, sulphides, and concentrates, consigned to or forwarded from the Balbach company. It is said to have been established originally on incoming traffic only, in order to relieve the express company of the responsibility of caring for shipments of value until such time as the consignee could call for them, but has since been extended to include outbound valuable shipments.

The defendants have declined to comply with requests for free collection and delivery because of the poor condition of the roads, the time consumed in going to and returning from the plants, and the amount and nature of the traffic to be handled. During the period from July 1, 1917, to December 31, 1917, the Butterworth-Judson Corporation received and forwarded shipments aggregating 469,351 pounds in weight, on which the express charges amounted to \$7,689.27. The United Oil & Chemical Corporation during the same period received and forwarded 628,506 pounds and the Balbach Smelting & Refining Company 232,704 pounds, exclusive of shipments of value. No movement is shown to or from the plant of the Columbus

Crystal Company. The outgoing shipments are forwarded in boxes, barrels, and casks, and weigh from 25 pounds to as much as 500 pounds in some instances. The defendants contend that traffic of this kind should move by freight and should not be given expedited movement by passenger trains, especially under present conditions. It is accepted for transportation, however, if delivered at the depots or is moved in defendants' own equipment from the plant of the Central Dyestuff & Chemical Company.

The defendants' chief objection to making collection and delivery for the complainants lies in the poor condition of the roads between Lincoln highway and Doremus avenue. Lincoln highway is a paved street, but avenue R is a cinder road now in course of improvement, and is said to be almost impassable at times from the entrance of the Butterworth-Judson Corporation's plant past the Columbus Crystal Company to the Balbach Smelting & Refining Company. It is in fair condition at least as far as the United Oil & Chemical Corporation's property.

The record shows that it is unnecessary to traverse avenue R to reach the premises of the Balbach company and the Butterworth-Judson Corporation. The former is served by way of Hamburg place and Balls lane, both good roads, and the latter can be reached over Plum Point lane and Allegheny avenue, a much shorter route than that via Lincoln highway and avenue R. There is some evidence of record to the effect that Allegheny avenue is in no better condition than avenue R, but this apparently refers to the condition of the road after the plant of the Butterworth-Judson Corporation has been passed. Avenue R would necessarily be used in going to and from the Columbus Crystal Company.

Section 3 of the act prohibits undue or unreasonable preference and advantage, or prejudice and disadvantage, to any person, company, firm, corporation, or locality. Whether the service that is accorded to shippers and localities elsewhere in Newark and is denied to the complainants and their particular locality constitutes an undue advantage to the former and an unreasonable prejudice to the latter must be determined by the conditions under which it is given on the one hand and withheld on the other. Free collection and delivery can not always be demanded as a matter of right, and express companies may be justified in refusing to offer it where the points to be served are not readily accessible or are too far removed from the depots, or where the traffic is insufficient to meet the expense incurred or is of such a nature as to preclude its movement by express.

The record establishes the fact that service to and from the complainants' plants, except the Columbus Crystal Company, is performed under conditions essentially similar to those under which it

is now maintained in their immediate vicinity, and the volume of traffic is shown to be substantial. The Columbus Crystal Company is excepted, since it can be served only over very poor roads and apparently offers little or no traffic.

The Commission should find upon all the facts of record that the failure of the defendants to accord to the complainants free collection and delivery service, while performing that service for industries and shippers on Hamburg place, Balls lane, Plum Point lane, and in the territory between Lincoln highway, Blanchard avenue, and the Passaic River results in undue and unreasonable prejudice to the complainants, except the Columbus Crystal Company, and the locality in which their plants are situated, which the defendants should be required to correct.

MEYER, Commissioner:

The foregoing is substantially the report prepared by the examiner and served upon the parties. Exceptions thereto have been filed by the defendants. Upon a careful examination of the record we are of the opinion that the conclusions proposed by the examiner should be sustained and the report is therefore adopted as the report of the Commission.

Since the record in this proceeding was closed and submitted the defendant express companies have been merged into one operating company, the American Railway Express Company. As that company is not a party to the proceeding an order directing the removal of the undue prejudice to which certain of the complainants have been found to be subjected can not be entered upon the present pleadings. It may be that the defendants' successor will undertake to conform its practices to comply with the views herein expressed without further action on our part. In the event, however, that it neglects or refuses to do so the fact may be brought to our attention by a supplemental complaint in which it shall be named as defendant, whereupon the matter will receive our further consideration.

No. 8597.

M. W. CARDWELL

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY
COMPANY ET AL.

Submitted February 19, 1918. Decided October 31, 1918.

1. Former finding that the movement of certain carloads of apples from Kansas City, Mo., to Kansas City, Kans., and return in the course of transportation from Eugene to Kansas City, Mo., was an unwarranted, uncalled for, and unnecessary service reversed on rehearing.
2. The shipments involved found to have consisted of cull or windfall apples, and the rate charged thereon found to have been unreasonable. Reparation awarded.

M. W. Cardwell and S. R. Duckett for complainant.

Paul E. Walker for defendant.

REPORT OF THE COMMISSION ON REHEARING.

BY THE COMMISSION:

Our original report is in 42 I. C. C., at page 730. The complaint relates to the movement of eight carloads of bulk apples in October and November, 1914, from Eugene, Mo., to Kansas City, Mo., which were transported through Kansas City, Mo., to Kansas City, Kans., and then returned to Kansas City, Mo. Charges were assessed at the interstate class rate of 22 cents per 100 pounds, minimum 24,000 pounds. We found that the haul to Kansas City, Kans., and return to Kansas City, Mo., was for the operating convenience of the carrier; was neither required nor authorized by the shipper; and that the charges collected in excess of those that would have accrued at an intrastate rate of 11 cents per 100 pounds should be refunded as overcharges.

Upon petition of defendant the case was reopened for further hearing. Complainant offered no additional evidence and defendant presented only that showing the location of its tracks and terminal yards at Kansas City, Mo., and Kansas City, Kans., concerning which no substantial evidence had been presented at the original hearing. This new evidence shows that the location of defendant's tracks

and the limitations of its contracts for trackage rights over other roads through Kansas City, Mo., rendered the handling of these shipments via Kansas City, Kans., necessary. This movement having been necessary the shipments were interstate in their character. There remain the questions as to the kind of apples which were shipped and the unreasonableness and unduly prejudicial character of the rate.

The rate of 22 cents charged, with minimum of 24,000 pounds, was the fifth-class rate which applied to and from a long group of stations on defendant's line. The same rate would have carried the shipments to Omaha, Nebr., a distance of some 482 miles. It would also have carried the shipments from St. Louis, Mo. Subsequent to the movement of these shipments defendant voluntarily established a distance scale of rates on cull or windfall apples which for the distance from Eugene to Kansas City would be 13 cents per 100 pounds, minimum 30,000 pounds.

Some attempt was made by defendant to show that these shipments did not consist of cull or windfall apples. The apples were shipped in bulk and it definitely appears that they were shoveled into the car. They were spoken of by complainant as run of the orchard, including windfalls and culls, and it appears that while there might have been among them some apples fit for packing, they were not sufficient in number to pay the cost of sorting them out. We find that the shipments in question come properly within the tariff description of cull or windfall apples.

We have in some cases approved application of fifth-class rates to packed apples. *Public Service Commission of Missouri v. Wabash R. R. Co.*, 37 I. C. C., 297; *1915 Western Rate Advance Case—Part II.*, 37 I. C. C., 114; and *Transportation of Apples in Carloads*, 24 I. C. C., 38. But we are here dealing with a different class of apples, of much less value, already inferior or damaged, and shipped in a different way. Defendant has voluntarily established for the service performed on these shipments a rate of 13 cents per 100 pounds, minimum 30,000 pounds.

Complainant's claim also includes an alleged overcharge in weight on three of the shipments. The evidence in support of the claimed weights merely shows that they were obtained at Eugene on wagon scales and were used in determining the amount paid by complainant for the apples. It appears that the weights applied were obtained on railroad track scales under the supervision of the Western Weighing Association. The amount involved is insignificant and the evidence does not justify a finding that the weights applied were erroneous.

Upon all the facts of record we find that the rate charged was unreasonable to the extent that it exceeded 13 cents per 100 pounds, minimum 30,000 pounds per car; that complainant made the shipments as described, and paid and bore the freight charges thereon; that he has been damaged thereby and is entitled to an award of reparation in the sum of \$201.22, with interest.

An order will be entered accordingly.

No. 8289.

ALLIANCE COAL & COKE COMPANY ET AL.

v.

COLORADO & SOUTHERN RAILWAY COMPANY ET AL.

Submitted February 8, 1918. Decided October 24, 1918.

Rates on pea and slack coal from the Walsenburg district in Colorado to points on the Atchison, Topeka & Santa Fe Railway in Kansas not shown to have been unreasonable or unduly prejudicial. Supplemental complaint dismissed.

Carle Whitehead and *Albert L. Vogl* for complainants.

Robert Dunlap and *T. J. Norton* for defendants; *J. J. Coleman* for Atchison, Topeka & Santa Fe Railway Company; *A. S. Brooks* for Colorado & Southern Railway Company; and *J. G. McMurry* for Denver & Rio Grande Railroad Company.

SUPPLEMENTAL REPORT OF THE COMMISSION.

BY THE COMMISSION:

In our original report herein, 42 I. C. C., 499, we found that the rates maintained by the defendants on nut coal from the Walsenburg district in Colorado to points in Kansas on the Atchison, Topeka & Santa Fe Railway, hereinafter called the Santa Fe, were unjustly discriminatory to the extent that they exceeded by more than 10 cents per net ton the rates contemporaneously applied from the Canon City, Colo., district to the same destinations. Upon the record then before us we were unable to fix a relationship between the rates on pea and slack coal and the rates on other kinds, but stated that defendants would be expected to establish rates on pea and slack coal from Walsenburg which should bear a proper relation to the rates on other kinds, and that if this was not done within 90 days the

matter might be again brought to our attention. In a supplemental complaint filed June 21, 1917, certain of the original complainants allege the failure of the defendants to establish these rates and ask for the establishment of rates to points on the Santa Fe in Kansas on a basis of 10 cents per ton higher than the rates from the Trinidad, Colo., district to the same destinations.

Effective September 20, 1917, the defendants published rates on pea and slack coal from the Walsenburg district to Santa Fe stations in Kansas, which were 30 cents per ton higher than the corresponding rates from the Trinidad district. On December 1, 1917, they established rates on pea and slack coal from the Canon City district to the same destinations on a basis of 10 cents per ton under the corresponding rates from Walsenburg, thus maintaining the relationship previously prescribed between rates on nut coal from those districts. The rates on pea and slack coal from Walsenburg were from 5 to 90 cents per ton lower than the rates on nut coal from the same district. The difference of 5 cents applied to a few points in northeastern Kansas, but elsewhere the minimum difference was 30 cents per ton.

The rates from the Walsenburg district were constructed by adding 55 cents per ton, the amount received by the originating lines on nut and lump coal, to the divisions accruing to the Santa Fe out of the joint rates on slack coal from mines in the Trinidad district served by the Colorado & Southern and the Denver & Rio Grande railroads. For the movement from mines in the Trinidad district those carriers received 25 cents per ton and for the added transportation from the Walsenburg district they demanded 30 cents more. The complainants object to this method of constructing the rates and contend that the relationship between the rates on slack and nut coal from the Walsenburg district should be the same as the defendants maintained between the rates on the different grades from the Trinidad district. They emphasize the fact that to many points in Kansas the spread between the rates on slack and nut coal was 20 cents more from Trinidad than from Walsenburg. Rates on nut coal from the Trinidad district were from 10 to 35 cents per ton lower than the corresponding rates from the Walsenburg district, as compared with the uniform difference of 30 cents between the rates on slack and pea coal.

Reference is also made by complainants to the rates from the Raton, N. Mex., district. The rates on slack and pea coal and on nut coal from mines on the Santa Fe, Raton & Eastern Railway to destinations on the Santa Fe in Kansas were made 10 cents per ton higher than the rates from the Trinidad district. The average distance from the Walsenburg district is but 15 miles more than the

distance from the Raton district to the same points, and the complainants therefore urge that the same relative adjustment should obtain between the rates from the Walsenburg and Trinidad districts.

The defendants contend that rates from Walsenburg on the basis suggested by complainants would be unremunerative. They urge that a differential of 30 cents is proper and conforms to the differential prescribed in *Cedar Hill Coal & Coke Co. v. C. & S. Ry. Co.*, 17 I. C. C., 479, for the movement of lump coal from Walsenburg to points south of Trinidad on the lines of the Santa Fe in Texas and New Mexico. In that case we did not require the establishment of a relationship between the rates on slack coal from the Walsenburg and Trinidad districts as the conditions surrounding the rates on slack coal from the two districts were found to be wholly dissimilar.

The record shows that slack coal is now moving interstate from the Walsenburg mines, due in part to the unusual demand and in part to the high prices realized. Formerly Walsenburg slack was sold as low as from 15 to 30 cents a ton and Trinidad slack from 75 cents to \$1 a ton. At the present time slack coal from Colorado mines is usually sold at the maximum prices fixed by the federal fuel administrator, which are \$1.95 per ton for Walsenburg and \$2.45 per ton for Trinidad slack. It is said that with the return of normal conditions Walsenburg operators will be unable to dispose of their slack coal in competition with mines in the Trinidad and Raton districts except at a sacrifice.

As stated in our original report, there does not appear to be any uniform relation between the rates on the different grades of coal from Colorado mines to the territory in question. The relationship which obtained between the rates on slack and pea coal from the Walsenburg and Canon City districts was the same as that prescribed with respect to the nut-coal rates.

Upon the whole record we conclude and find that the rates assailed were not unreasonable or unduly prejudicial. The Director General of Railroads in exercise of powers conferred upon the President by the federal control act, approved March 21, 1918, has by General Order No. 28, bearing date May 25, 1918, initiated and directed the establishment on June 25, 1918, of rates which exceed the rates assailed, thereby fixing the rates to be applied for the future on the traffic here under consideration. As no amendment to the complaint naming the Director General a party defendant was presented the present rates can not be dealt with on this record.

An order dismissing the supplemental complaint will be entered.

51 I. C. C.

No. 9581.

J. E. CARROLL & COMPANY ET AL.

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted November 27, 1917. Decided November 4, 1918.

Rates charged on cattle, in carloads, from stockyards at Fort Worth, Tex., to certain destinations in Oklahoma found to have been legally applicable and not shown to have been unreasonable. Complaint dismissed.

B. D. Pelton for complainants.

T. J. Norton, W. F. Dickinson, and C. S. Burg for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS McCHORD, DANIELS, AND WOOLLEY.

BY DIVISION 2:

The complainants allege, by complaint seasonably filed, that the rates on cattle, in carloads, in effect during the years 1914, 1915, and 1916, from Fort Worth, Tex., to various points in Oklahoma, applied on certain shipments which originated at the Fort Worth stockyards, on the Fort Worth Belt Railway, hereinafter called the belt line, and switched thence to the Missouri, Kansas & Texas Railway of Texas, hereinafter called the defendant, at or near Hodge, Tex., were illegal and unreasonable in that they exceeded the rates contemporaneously in effect from Hodge. Reparation is asked.

The stockyards at Fort Worth, which constitute defendant's livestock depot at that place, are about 2 miles north of the center and within the switching limits of Fort Worth. The defendant's rails do not extend to the stockyards, traffic to or from which is handled for it by the belt line. The belt line, which alone serves the stockyards, loaded the shipments there and switched them to what is known as Belt Junction, where the tracks of the defendant and the belt line connect, a distance of about 1½ miles. At Belt Junction the cars were placed upon the interchange tracks, from which they were moved by the defendant to Hodge, a little more than half a mile, and there placed in through trains going north. For the loading services performed by the belt line the defendant absorbed a charge, which is given as 50 cents per car, and for the switching movement from the stockyards to Belt Junction the defendant absorbed the belt line's charge of \$2 per car.

11 I. C. C.

The rates charged on these shipments were the rates from Fort Worth to destinations. Complainants' whole contention is that the rates which should have applied were the rates published from Hodge. The rates from Hodge to destinations in Oklahoma were from \$1.70 to \$5.75 per carload lower than from Fort Worth. This relationship was established at a time when Hodge was outside the switching limits of Fort Worth, and was maintained for some years after the switching limits of Fort Worth were extended to embrace Hodge. These rates applied only on shipments loaded at Hodge, and no absorptions were made under the rates from that point. Since these shipments moved the rates from Hodge have been made the same as from Fort Worth. Rates from Fort Worth, by specific tariff provisions, include loading at the public live-stock market at Fort Worth and switching by the belt line to Belt Junction at defendant's expense. There never has been a public live-stock market at Hodge; rates therefrom during the period covered by the complaint did not include the absorption of switching or other charges, and the only live-stock public market at Fort Worth shown in this record is that maintained at the stockyards. The paid expense bills covering these shipments all show the point of origin as "Fort Worth B." Fort Worth B is not a station, but an office maintained by the defendant at the stockyards for the convenience of shippers, and its designation as Fort Worth B is merely for defendant's own purposes in accounting. Transportation contracted for at Fort Worth B contemplates the movement of cattle from the Fort Worth stockyards by the belt line, as provided by tariff, at the rates named from Fort Worth.

Rates from Fort Worth are not assailed as unreasonable, but complainants say that they are entitled to the lower rates from Hodge, because, the latter being within the switching limits of Fort Worth, there were two sets of rates from Fort Worth, and that they are entitled to the lower of these sets. They also urge that because these shipments did not move through the freight terminals of the defendant within the municipal limits of the city of Fort Worth it was improper to apply the freight rates which are published as from Fort Worth. The tariff shows one set of rates from Fort Worth, which provides for the absorption of belt switching charges from the Fort Worth stockyards, and another set of rates from Hodge, which makes no such provision. As before stated, the shipments originated, not at Hodge, but at the stockyards in Fort Worth, and the fact that in their movement a circuitous and useless route was not taken did not affect the applicability of the Fort Worth rates. In effect, the belt line was an extension of defendant's line, reaching a point from which the Fort Worth rates applied and at which the transportation under those rates commenced.

We find that the rates assailed were legally applicable and that they are not shown to have been unreasonable. An order dismissing the complaint will be entered.

No. 9699.

**HOLT MANUFACTURING COMPANY, INCORPORATED,
ET AL.**

v.

SOUTHERN PACIFIC COMPANY ET AL.

Submitted November 21, 1917. Decided October 29, 1918.

Rates on steel lubricating or grease cups, in less than carloads, from Battle Creek, Mich., and certain other points, to Stockton, Cal., found to have been unreasonable. Reparation awarded.

J. C. Sommers for complainants.

Fred H. Wood, C. W. Durbrow, Geo. D. Squires, and Frank B. Austin for Southern Pacific Company; *T. J. Norton and E. W. Camp* for Atchison, Topeka & Santa Fe Railway Company; and *Allan P. Matthew* for Western Pacific Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainants are corporations engaged in manufacturing agricultural implements and gasoline traction engines at Stockton, Cal. By complaint filed May 16, 1917, they allege that the rates charged by the defendants on numerous less-than-carload shipments of steel lubricating or grease cups forwarded from Battle Creek and Detroit, Mich., Minneapolis, Minn., and Auburn, N. Y., to Stockton, between November 4, 1915, and March 5, 1917, were unreasonable and unduly prejudicial to the extent that they exceeded the rates contemporaneously applicable on similar cups made of brass, bronze, and copper. Reparation is asked. Rates are stated in amounts per 100 pounds and apply on less-than-carload shipments.

The facts are stipulated. The shipments moved over the defendants' lines by various routes and charges were collected at the applicable third-class rates of \$2.52 from Battle Creek and Detroit, \$2.38 from Minneapolis and \$2.65 from Auburn. There were contemporaneously in effect to Stockton commodity rates on brass, bronze, and copper lubricating or grease cups, including iron and brass combined, of \$2.30 from Battle Creek and Detroit, \$2.14 from Minneapolis, and \$2.50 from Auburn. There was also a rate of \$2 on the same articles from these points of origin to the California terminals. The departures from the provisions of the fourth section

resulting from the charging of a lower rate to the terminals than to Stockton, an intermediate point, were authorized by Fourth Section Order No. 124 in *Railroad Commission of Nevada v. S. P. Co.*, 21 I. C. C., 329. Effective March 15, 1918, following *Transcontinental Commodity Rates*, 48 I. C. C., 79, these departures were removed by increasing the rates to the terminals to the level of the rates to Stockton. On April 16, 1917, the application of the commodity rates above mentioned was extended to iron and steel lubricating or grease cups. Prior to November 15, 1914, there was a blanket rate of \$2.35 applicable on lubricating or grease cups, made of steel or other metals, from and to all the points in question.

For the defendants it is stated in the stipulation that when the commodity rates on brass, bronze, and copper lubricating or grease cups were published they were informed and believed that grease or lubricating cups were manufactured only of brass, bronze, and copper, and that it was never their intention, and was unreasonable, to apply higher rates on iron and steel cups than contemporaneously applied on brass, bronze, and copper cups, which are much more valuable.

We find that the rates assailed were unreasonable to the extent that they exceeded the rates contemporaneously applicable on brass, bronze, and copper lubricating or grease cups from and to the same points. We further find that the complainants made the shipments as described and paid and bore the charges thereon; that they have been damaged to the extent that the charges paid exceeded those that would have accrued at the rates herein found reasonable; and that they are entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record, and the complainants should prepare statements showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the dates on which the charges were paid, which statements should be submitted to the defendants for verification. Upon receipt of statements so prepared and verified, we will consider the entry of an order awarding reparation. As to the future we make no finding and enter no order for the reason that the rates herein assailed were increased on June 25, 1918, under General Order No. 28 issued by the Director General of Railroads, who has not been made a party defendant, and in the present state of the pleadings the rates so increased are not subject to review by this Commission.

51 I. C. C.

No. 9818.¹
NEW YORK & NEW JERSEY PRODUCE COMPANY
v.
NEW YORK, NEW HAVEN & HARTFORD RAILROAD
COMPANY.

Submitted January 25, 1918. Decided October 29, 1918.

Car-detention charges at Harlem River, New York, N. Y., on carload shipments of potatoes from certain points in Maine not shown to have been unreasonable but found to have been unduly prejudicial. Reparation awarded.

H. L. Davis for complainants.

C. M. Sheafe, jr., for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

The complainants, in No. 9818, a corporation, in Sub-No. 1, August Wieners, August Wieners, jr., and Henry Koester, copartners, trading as Koester & Wieners, and in Sub-No. 2, T. Carobine and Harry Brenneis, copartners, trading as Carobine & Brenneis, are engaged in the produce business at New York, N. Y. In their complaints, seasonably filed, they seek reparation, alleging that the car-detention charges assessed by the defendant at its Harlem River, New York, station, on various carloads of potatoes shipped in Eastman heater cars and lined box cars from certain points in Maine between November 5, 1913, and March 27, 1914, inclusive, were unreasonable and unduly prejudicial.

The shipments moved from Easton, Fort Fairfield, Caribou, Presque Isle, and other points in Maine, over the Bangor & Aroostook, the Maine Central, and the Boston & Maine railroads and the defendant's lines to Harlem River, New York. Detention charges were assessed after the expiration of the two-day free demurrage period at the rate of \$1 per car per day for the first two days and \$2 per day for each succeeding day, and were additional to the demurrage and storage charges. Only the detention charges are in issue. Charges on some cars in No. 9818 and Sub-No. 2 remain uncollected pending the decision in this case.

¹ This report also embraces No. 9818 (Sub-No. 1), *Koester & Wieners v. Same*, and No. 9818 (Sub-No. 2), *Carobine & Brenneis v. Same*.

The demand for heater cars and lined cars during the season from November to April is heavy, and prompt release of equipment is necessary. Effective November 1, 1913, the Bangor & Aroostook published a tariff providing detention charges on such cars held under load at destination, to which tariff the defendant was a party. Similar tariffs were also published by the Boston & Maine and Maine Central railroads and the Canadian Pacific Railway, but, due to improper concurrences, the charges provided therein did not apply at stations on the defendant's line. Effective March 28, 1914, the detention charge in connection with shipments originating on the Bangor & Aroostook was canceled.

In *Providence Fruit & Produce Exchange v. M. C. R. R. Co.*, 36 I. C. C., 307, we found that the defendants had justified car-detention charges of \$1 for the first two days after free time and \$2 per day for each succeeding day.

The record shows that the complainants' profits on potatoes were from 5 to 8 cents per bushel; that when these potatoes were marketed the selling price in the various markets in and around New York were substantially the same; that the complainants sold them in actual competition with merchants who received their potatoes in New York from points in Maine on the Boston & Maine and Maine Central; and that the selling price could not be increased to cover the car-detention charges assessed.

We find that the charges assailed are not shown to have been unreasonable, but that they were unduly prejudicial to complainants, in favor of their competitors who received shipments at New York from points in Maine on the Boston & Maine and Maine Central. We further find that the complainants made shipments as described; that on certain of these shipments they paid and bore the detention charges and have been damaged and are entitled to reparation, with interest. The exact amount of reparation due can not be determined upon this record, and the complainants should prepare statements showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the dates on which the charges were paid, which statements should be submitted to the defendant for verification. Upon receipt of statements so prepared and verified, we will consider the entry of an order awarding reparation. Collection of the outstanding undercharges should be waived.

51 I. C. C.

No. 9964.

FRANK B. PETERSON COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted August 18, 1918. Decided November 4, 1918.

The assessment of charges for storage at the ports of Newport News, Va., and New York, N. Y., on carload shipments of salmon on through export bills of lading from San Francisco, Cal., to London, England, found not to be or to have been unreasonable, unjustly discriminatory, or unduly prejudicial. Complaint dismissed.

Frank B. Peterson for complainant.

G. H. Baker and *Platt Kent* for Atchison, Topeka & Santa Fe Railway Company; Western Pacific Railroad Company; Denver & Rio Grande Railroad Company; Erie Railroad Company; and Chesapeake & Ohio Railway Company.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

In November, 1916, complainant shipped under through billing 26 carloads of canned salmon from San Francisco, Cal., to London, England, 16 of which were exported through the port of Newport News, Va., and 10 through the port of New York, N. Y. After the expiration of free time at the ports storage charges of \$791.65 were collected, which are alleged to be unreasonable, unjustly discriminatory, and unduly prejudicial. Complainant seeks an order prohibiting the assessment of such storage charges in the future and also reparation in the amount stated.

Defendants' terminal tariffs contain provisions for the assessment of storage charges on export shipments after a certain free time has elapsed. Complainant was unable to state why the salmon remained at the respective ports beyond the free-time period and was not aware that it was delayed until claim was made by defendants for the storage charges. Defendants' witness, however, stated that at the time conditions at the ports were greatly disrupted on account of the war and that regular sailing schedules were not followed.

Although the rates plus the storage charges are alleged to be unreasonable and unjustly discriminatory to the extent of said charges, complainant does not insist that the storage charges themselves, if

universally imposed, are inherently excessive or prejudicial. The primary contention is that no charges whatever, regardless of their measure, should be assessed against shippers for storage at the ports on shipments moving under through export bills of lading; that under the contract of carriage defendants were obligated to deliver the salmon in London at the through rate quoted by defendants' agent, which rate was used by complainant in fixing the selling price to the consignee.

One of the tariff conditions precedent to the issuance of a through export bill of lading is that the shipper shall guarantee the payment of storage charges which may be occasioned at the ports. Complainant asserts that no such guaranty was given. The bills of lading under which complainant's shipments were made and which have been in general use for several years, contain various conditions and stipulations which are agreed to by the shipper or owner of the goods "as fully as if they were all signed by such shipper or owner." The thirteenth condition reads:

All property subject to delay at the port of transshipment, awaiting available steamer space: Storage and insurance to be at the expense of the owner.

Both the propriety of assessing port-storage charges against shippers and the requirement of a guaranty for the payment of such charges in connection with shipments under through export bills of lading were fully considered in *New York Produce Exchange v. B. & O. R. R. Co.*, 46 I. C. C., 666, wherein the Commission held that such practices were justified so long as no unjust discrimination is practiced. None was shown to exist in the instant case. These matters are also under consideration in Docket 4844, *In the Matter of Bills of Lading*, now pending. Without prejudice to any conclusion which may be reached in that case, and following the decision in *New York Produce Exchange v. B. & O. R. R. Co.*, *supra*, the Commission should find that the assessment of charges for storage at the ports of Newport News and New York on carload shipments of salmon on through export bills of lading from San Francisco to London is not and was not unreasonable, unjustly discriminatory, or unduly prejudicial against complainant.

DANIELS, *Chairman*:

The foregoing is the report proposed by the examiner and served upon the parties to the proceeding. No exceptions thereto were filed. The report and conclusions proposed by the examiner are approved and adopted as the report and conclusions of the Commission, and an order will be entered dismissing the complaint.

No. 9683.
ODEN-ELLIOTT LUMBER COMPANY
v.
ALABAMA CENTRAL RAILWAY.

Submitted March 9, 1918. Decided November 2, 1918.

Upon complaint that defendant failed to supply sufficient cars to transport lumber from Autaugaville, Ala., to interstate destinations, and that it unduly preferred complainants' competitors in distribution of available cars, to the injury of complainants; *Held*:

1. That, without passing upon the question of jurisdiction to award damages for the alleged failure to furnish cars upon reasonable request as required by section 1, under the circumstances disclosed of record it could not with propriety be found that defendant should respond in damages for its inability to furnish a full car supply.
2. Defendant's practices with respect to the distribution of available cars, while meriting criticism, not shown to have unduly preferred complainants' competitors with resulting damage to complainants. Complaint dismissed.

Vassar L. Allen and B. K. Fisk for complainants.

William F. Thetford, jr., for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AITCHISON, AND
ANDERSON.

The complainants, J. W. Oden and J. J. Elliott, are copartners under the firm name or style of Oden-Elliott Lumber Company, with offices and principal place of business at Birmingham, Ala., and are engaged in cutting, sawing, and dressing lumber and shipping it to interstate points. By complaint filed May 14, 1917, as amended, they allege that defendant failed upon reasonable request to furnish an adequate supply of cars to complainants, in violation of section 1 of the act, and that during two years previous to May 1, 1917, the defendant unduly preferred certain of complainants' competitors in distribution of empty cars for shipments of lumber from Autaugaville, Ala., to interstate destinations, in violation of section 3 of the act. Reparation is asked.

Complainants own and operate saw and planing mills at several points in the state of Alabama. At the time the complaint was filed

they owned rights to timber on a tract of land near Autaugaville, and two sawmills $5\frac{1}{2}$ and $6\frac{1}{2}$ miles distant, respectively, from Autaugaville. Thereafter, the exact date not appearing, complainants ceased to operate these mills, and later sold the timber holdings.

Defendant's railroad extends $8\frac{1}{2}$ miles in a westerly direction from Booth, Ala., to Autaugaville, and at the former connects with the Mobile & Ohio. It owns a locomotive and a passenger coach, but no freight cars. Under agreement with the Mobile & Ohio the latter furnishes freight cars for the movement of traffic and treats defendant as though it were a branch line, but that road is not named as a party defendant. Defendant's chief source of revenue is from the transportation of lumber, and when the timber tributary to its line shall have been cut and shipped its traffic will not more than pay operating expenses.

Four lumber concerns are served by defendant, namely, complainants, Whitewater Lumber Company, Felton Lumber Company, and James Miller. The first three ship pine lumber from Autaugaville. Miller ships hardwood from a point between Autaugaville and Booth, where a short spur track has been built for loading purposes. He uses refrigerator cars, in which pine lumber can not be transported, and there is no suggestion that he has been preferred.

The maximum aggregate capacity of complainants' two sawmills was 25,000 feet of lumber per day, but the record indicates that the output was something less than half that amount. The lumber after being dressed was hauled from the mills to Autaugaville by wagon. Complainants had no yards or sheds of their own at Autaugaville upon which to stack or in which to store their lumber awaiting shipment. They piled the lumber on defendant's right of way, or lands adjacent, and used a shed owned by defendant in which about 150,000 feet could be stored. At the date of the hearing, September 28, 1917, they had 175,000 feet at that point; in the latter part of August, 1916, 700,000 feet; and on December 20, 1916, 1,300,000 feet.

The Whitewater Lumber Company operates its saw and planing mill at Autaugaville, and has extensive yards and sheds adjacent to tracks of defendant for storing lumber. Its mill has a capacity of 40,000 feet per day. Logs are hauled to the mill over a railroad which it owns and operates. It was testified that it has facilities for loading four or five cars at a time.

The following statement shows the amount of lumber, in feet, which the Whitewater Lumber Company had on hand on the first day of each month from and including January 1, 1916, to and including September 1, 1917:

	Feet.			Feet.	
	1916	1917		1916	1917
Jan. 1.....	4,189,216	7,090,553	July 1.....	5,902,068	7,679,084
Feb. 1.....	4,395,161	6,771,306	Aug. 1.....	6,200,000	7,448,292
Mar. 1.....	4,800,867	7,225,468	Sept. 1.....	6,205,246	6,600,159
Apr. 1.....	5,108,201	7,123,410	Oct. 1.....	6,217,337	.....
May 1.....	5,738,826	7,502,440	Nov. 1.....	6,597,236	.....
June 1.....	6,017,457	7,564,463	Dec. 1.....	7,158,009	.....

At the time of the hearing it had from 1,500,000 to 2,000,000 feet of dressed lumber in its sheds, and the remainder was rough lumber stacked in yards.

The Felton Lumber Company operates a sawmill in the woods at some distance from Autaugaville, the capacity of which is about 10,000 feet a day. Its planing mill is at Autaugaville, where the rough lumber, hauled by wagon from the sawmill, is dressed. It owns sheds in which dressed lumber may be stored. This company, when it did not receive sufficient cars to transport its lumber, closed its planing mill, and for that reason did not have a large amount of dressed lumber on hand ready for shipment.

Defendant publishes no rules for the distribution of cars to shippers on its line. The president of the defendant company instructed the conductor of its train to make as equitable distribution as possible, and he followed a general plan of distribution under which the Whitewater Lumber Company was to receive four cars; complainants one or two cars; and the Felton Lumber Company, one car. It does not appear whether Miller was counted in this plan of distribution or not. Defendant's conductor depended largely upon his memory, assisted by entries made in small notebooks, to determine which shipper had received the last car and which was entitled to the next. He testified that distribution was made as fairly as the circumstances would permit.

Up to June 1, 1916, the defendant was able to meet the demands of shippers without serious complaint. The complainants do not assert that prior to June 1, 1916, they were discriminated against, or that they did not receive a fair number of cars. In August and September, 1916, complaints were made against defendant's methods of distribution. In the month of October complainants took up the matter of car supply and distribution with officials of the Mobile & Ohio as well as with the president of the defendant company, and the Alabama Public Service Commission. At that time complaint was made that the Whitewater Lumber Company was receiving more than its share of available cars. The president of defendant company suggested that the Alabama Public Service Commission or the assistant

freight traffic manager of the Mobile & Ohio be selected to arbitrate the dispute between the shippers and defendant, but the suggestion was not followed.

Defendant was notified in October, 1916, by letter that complainants would receive and load any sized car furnished; that they had some lumber which because of its length could not be shipped in cars less than 38 feet long, and that they would require some long cars. Defendant's conductor testified that he was informed by representatives of complainants, and in this he is corroborated by the station agent at Autaugaville, that they could only use cars from 38 to 40 feet in length; that this was after complainants had written that they would accept any kind of car offered; that more cars were not furnished complainants during particular periods on this account; that complainants held the cars for loading for long periods; and that an empty car was not placed until the car already delivered was loaded.

Under date of February 23, 1917, the Mobile & Ohio issued a circular to the effect that routing must be given by shippers in order to enable it to determine whether the cars were moving in the direction of the home road, as required by car-service rules. This circular, as it read, required shippers not only to name the destination of shipments but to specify intermediate routing as well. The complainants refused to give intermediate routings to defendant and some cars were not furnished them for that reason, but how many does not appear. On March 10, 1917, the circular was modified by the Mobile & Ohio and shippers were not thereafter required to designate complete routing. The Whitewater Lumber Company, during the 15-days interval, gave the agent of defendant at Autaugaville complete routing instructions for its shipments.

Numerous instances are referred to by complainants which, they insist, demonstrate defendant's purpose to prejudice them and prefer their competitors. For example, 12 specially consigned cars from the Alabama Great Western Railroad were furnished to the Whitewater Lumber Company in March, 1917, and were not counted against that company's allotment; and beginning in May, 1917, cars for shipment of government lumber were furnished to the Whitewater Lumber Company and not counted against it.

Complainants, the Whitewater Lumber Company, and the defendant submitted statements as to the car supply from June 1, 1916, to September 1, 1917. These statements do not agree as to the number of cars supplied, and it is impossible from the evidence to reconcile the differences. Under agreement made at the hearing the defendant was given leave to compile and submit statements, subject to check

by the complainants, showing from its records the cars furnished each shipper, the numbers of the cars, the day the empty car was received by the shipper, the day the loaded car was delivered to defendant, and the route of movement. The statements are of record, and the complainants have waived check. They constitute the best evidence as to car supply at the various mills, and will be used for analysis as condensed in the following table which shows the number of cars furnished to the four lumber shippers served by defendant for each month from June 1, 1916, to September 26, 1917:

	Com- plainants.	White- water.	Felton.	Miller.
1916.				
June.....	18	8	4	3
July.....	7	13	.....	1
August.....	10	26	.....	5
September.....	2	37	.....	3
October.....	8	27	.....	2
November.....	6	15	4	4
December.....	15	44	5	8
1917.				
January.....	14	33	2	3
February.....	4	15	3	3
March.....	6	24	5	2
April.....	6	14	8	7
May.....	6	42	7	3
June.....	8	42	9	1
July.....	9	60	7	2
August.....	5	80	9	.....
September.....	4	26	9	.....
Total.....	118	506	72	42

¹ All but 2 of the cars listed in June were received empty by complainants in May, but were delivered loaded to defendant in June.

A representative of the Whitewater Lumber Company testified that the following cars were received by that company in 1917 for loading under orders from the War Department: 14 in May, 9 in June, 28 in July, 64 in August, and 23 in September, a total of 138 cars. In addition that company received during the period 368 cars for commercial loading.

On brief, statements are made by complainants with respect to detention of cars which can not be checked from the record. The following table gives a comparison of these statements with one compiled from the exhibit of defendant as to car performance. Complainants excluded the day on which the car was received and included the day of delivery. In the compilation a day on which the car is both received and delivered is not counted, but a day is counted when a car is received on one day and delivered on the next:

	Com-plainants' statements.	Compiled figures.
Whitewater Lumber Company:		
Number cars furnished.....	506	506
Number days held.....	1,093	1,151
Average days held.....	2.15	2.27
Complainants:		
Number cars furnished.....	107	118
Number cars refused.....	8	8
Number cars received.....	99	110
Number days held.....	382	339
Average days held.....	3.85	3.08
Felton Lumber Company:		
Number cars furnished.....	72	72
Number cars received.....	71	71
Number days held.....	160	161
Average days held.....	2.25	2.24
James Miller:		
Number cars furnished.....	43	43
Number cars received.....	42	42
Number days held.....	139	120
Average days held.....	3.31	2.79

It will be noted that complainants refused eight cars that were furnished, and held them a total of 18 days before refusal. These eight cars were not counted in the compiled figures in determining the average days' detention. Complainants' figures show slightly greater average detention than those compiled from defendant's exhibit, and both show that complainants held cars longer on the average than any of the other shippers named.

One of the complainants expressed the opinion that they were fairly entitled to one-fourth of the cars which defendant had for distribution, but no definite basis for this opinion was given. It appears to be based upon relative capacity of the sawmills. Complainants' superintendent, who lived at Autaugaville and had charge of the business there, stated that in his opinion the Whitewater Lumber Company was entitled to three cars to complainants' one, and that complainants were entitled to three cars to one for the Felton Lumber Company. There is no showing as to the shipping capacity of the Felton Lumber Company.

Complainants admit that after May 1, 1917, they refused cars tendered by defendant, and assign as a reason that having been forced out of business their labor force became disorganized and they were unable to secure help to load the cars tendered.

When complainants ceased operations at their mills in May, 1917, they held timber deeds to 2,500,000 feet of standing timber near Autaugaville. It was testified that this could have been cut, hauled, dressed, and loaded on cars at Autaugaville at an aggregate cost to complainants of \$7 per thousand feet. Figuring the cost of the standing timber at \$2 per thousand feet and a fair average market price for the lumber f. o. b. cars at Autaugaville at \$19 per thousand feet complainants contend that they have been deprived of profits aggreg-

gating \$25,000. The deeds would have expired by limitation on December 31, 1917, but an extension of six years was procured by the payment of \$1,185 to the owners of the property. It was testified for complainants that this timber could have been removed within the original period had defendant furnished sufficient cars, and further that because of inability to secure cars they were obliged to dispose of their timber holdings to the Whitewater Lumber Company for \$5,000, which was about half the actual worth. Reparation is therefore sought in the sums of \$25,000 for lost profits and \$1,185 paid for the extension of the timber deeds, less \$5,000 realized from the sale thereof to the Whitewater Lumber Company, or a total of \$21,185. Apparently as an alternative, complainants claim \$5,000 as damages resultant from the sale of their timber deeds to the Whitewater Lumber Company, which is the difference between the sale price and what was asserted to be the fair value of the standing timber. Between June 1, 1916, and the date of the hearing 2,004,160 feet of lumber was shipped by complainants. This was stacked along defendant's right of way awaiting shipment and it is contended that due to exposure it deteriorated in value \$8 per thousand feet, or a total of \$16,332.80, for which reparation is also claimed.

It was not until June, 1916, when the car shortage, which became acute in the fall of 1916 and continued during the year 1917, began to be felt, that shippers of lumber on the line of defendant's railway seriously complained of unjust and inequitable distribution. Defendant had no real difficulty prior to the fall of 1916, and the plan adopted by the conductor of allotting four cars to the Whitewater Lumber Company, one or two to complainants, and one each to Felton and Miller was reasonably satisfactory. When demand became greater than supply, and each shipper was contending that he was not receiving a fair proportion, defendant endeavored to secure more cars and to adopt some plan that would satisfy shippers. Some time in May, 1917, the date not appearing, an effort was made by defendant to have all its lumber shippers agree. A conference was held, but complainants declined to take part or be bound by any agreement that might be reached. As the result of the conference the defendant agreed to distribute as follows: To Whitewater Lumber Company, three cars, and to complainants and Felton Lumber Company, one each.

For defendant it is contended that the difficulty with respect to complainants' lumber business at Autaugaville was not the result of any default upon defendant's part, but was the direct result of the manner in which complainants conducted their business; and further that complainants' claim of undue prejudice rests on the allegation that they did not receive their rightful share and were compelled to

close their mills in May, 1917. Defendant therefore says that no consideration should be given to car distribution since the mills closed.

From June 1, 1916, to May 1, 1917, complainants received 86 cars; the Whitewater Lumber Company, 256; the Felton Lumber Company, 31; and Miller, 36. Complainants thus received more than one-third as many cars as the Whitewater Lumber Company, nearly three times as many as the Felton Company, and more than twice as many as Miller. Complainants held the cars furnished them during that period a total of 278 days, or 3.23 days per car on the average; the Whitewater Lumber Company held its cars 587 days, or 2.29 days per car; the Felton Lumber Company 53 days, or 1.77 days per car; and Miller 110 days, or 3.06 days per car.

It appears that complainants took one day more to load than did the Whitewater Lumber Company and one and one-half days more than the Felton Lumber Company. Defendant therefore contends that complainants' delay was needless, and existed because of poor management by their representatives. If they had promptly loaded defendant would have furnished a greater number of cars. The delay in loading had the direct effect of decreasing the number of cars furnished defendant by the Mobile & Ohio, and thus decreased the number of cars available for complainants as well as other shippers.

After May 1, 1917, complainants received fewer cars than before that date. Defendant explains that complainants were not producing lumber then; that all they had was a supply of lumber, previously accumulated, and constantly diminishing; and that complainants can not rightfully claim that they were entitled to as great a proportion of cars after May 1 as theretofore.

Complainants' lumber held at Autaugaville for shipment was not properly stacked. It was thrown on lands of defendant or near its tracks, except for the small amount stored in defendant's shed. If pine lumber is properly stacked it will stand for as much as a year without material injury according to the testimony of a practical lumberman. Damage to complainants in the depreciation of their lumber was not caused by the failure of defendant to furnish cars, but was directly due to the manner in which the lumber was piled along the tracks. Complainants knew that there was a serious shortage of cars, and that there would necessarily be some delay in the movement of their lumber, and defendant contends that the piling of lumber without regard to its protection from the elements was an act of negligence upon the part of complainants for which defendant ought not to be held liable. It is shown by defendant that it

offered complainants ample space on lands owned by it at Autauga-ville to stack lumber without charge.

It is admitted by defendant that it supplied the Whitewater Lumber Company after May 1, 1917, with a large number of cars for shipment of lumber to the government, for construction of army cantonments. Cars for these shipments were supplied upon request from the War Department or the car service commission.

Defendant contends that diligence and efficient management would have enabled complainants to cut and ship all of the standing timber within the six months interim between May, 1917, when they ceased operations, and December, 1917, when their timber rights were to expire; that there was no good reason why they could not have cut and shipped this timber after securing an extension; and that therefore it is unjust to claim that any part of the damages asserted to have been suffered in this respect was due to faulty car distribution.

At the hearing the complaint was amended to include an allegation that defendant upon reasonable request failed to furnish adequate equipment, in violation of section 1 of the act. As heretofore stated, defendant owned no cars of its own, and there is no showing that it did not use every effort to secure more cars from its connections. War demands led to vastly increased shipments in domestic and foreign commerce and resulted in an unprecedented shortage of cars. Without passing upon the question of jurisdiction to award damages for the alleged failure to furnish cars upon reasonable request as required by section 1, it may be said that under the circumstances disclosed of record it could not with propriety be found that defendant should respond in damages for its inability to furnish a full car supply. This, of course, would not excuse defendant from its obligation to fairly and impartially distribute such cars as became available.

There is much to criticize in defendant's methods, and its cars should be distributed upon a fair basis. Complainants have no interest in future distribution of cars by defendant to lumber mills. They have ceased to produce lumber on its line. Their interest is in their claim for reparation. It must clearly appear, before such an award may properly be made, that the injury and resulting damage are directly attributable to some violation by defendant of the provisions of the act.

Under all the facts and circumstances appearing of record a finding is recommended that the allegations of the complaint have not been sustained, and that the complaint is dismissed.

HALL, *Commissioner*:

The foregoing, with modifications, is the report proposed by the examiner and served upon the parties. Exceptions thereto were filed by complainants and the case stands submitted after argument. The exceptions are directed primarily to the weight attached to the evidence by the examiner. No substantial error in the statement of facts is alleged.

Defendant has a road less than 9 miles long, and depends for the most part upon the revenue derived from the shipment of lumber tributary to its line. It has no affiliations with any of the lumber mills served by it, and we are convinced that it endeavored to make just and equitable distribution of cars among them. It would seem that its difficulties in this respect may be attributed chiefly to the fact that there was no one experienced in such matters to supervise operations. It had one conductor who appears to have constituted its entire operating staff, and he did the best he could under the circumstances to fairly distribute the available supply of cars.

While it was testified that complainants' mills near Autaugaville had a combined capacity of from 20,000 to 25,000 feet a day there is no other evidence of the fact. The record indicates that the production was less. The Whitewater Lumber Company's capacity was 40,000 feet a day, and it was testified by complainants' superintendent that this mill was entitled to three cars to complainants' one. It appears that from June 1, 1916, up to the time when complainants ceased their operations in May, 1917, they received slightly more than one-third as many cars as the Whitewater Lumber Company. Thereafter the Whitewater Lumber Company received special consignments of cars for the purpose of shipping lumber to the government for cantonment construction. At first these were not charged against its allotment, but when the matter was brought to the attention of defendant by the Felton Lumber Company the conductor was directed to charge such cars against its distributive share.

The practices of defendant merit criticism. The absence of any systematic method of distribution is at once apparent, and defendant should promptly remedy the situation by establishing just and equitable rules for the guidance of its employees. We have had occasion to consider a somewhat analogous situation in *Farmer's Elevator Co. v. C., M. & St. P. Ry. Co.*, 47 I. C. C., 482. It was there found unwise to leave the method of distributing grain cars to the discretion of local agents; that such practices led to unjust discrimination; and defendant was required to publish and file just and reasonable rules for their guidance. In *Diamond Lumber Co. v. C., M. & St. P. Ry. Co.*, 51 I. C. C., 78, we found, under the circumstances there disclosed,

that strict rules of car distribution would doubtless fail in practical application, and that it was necessary to lodge discretion with some one, in that case with the chief train dispatcher. No such circumstances appear in the case before us.

At the time of the hearing complainants had but 175,000 feet of lumber awaiting shipment, less than 10 carloads. As they have discontinued operations and disposed of their timber holdings in this vicinity their only remaining interest appears to be in the matter of reparation. Upon consideration of the facts of record the proposed report of the examiner, as modified, is approved and adopted as a part of this report.

An order will be entered dismissing the complaint.

51 I. C. C.

No. 7803.
TOWN OF TORRINGTON, WYO.,
v.
CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY.

Submitted October 22, 1917. Decided November 4, 1918.

Upon rehearing, rates on cattle, sheep, and hogs, in carloads, from Torrington, Wyo., to Omaha, Nebr., found not to be unreasonable, but unduly to prefer Henry, Nebr..

Charles E. Lane for complainant.

R. B. Scott and Kenneth F. Burgess for defendant.

Dexter T. Barrett, Deputy Attorney General, for state of Nebraska and Nebraska State Railway Commission.

Victor E. Wilson, Commissioner, and *U. G. Powell* for Nebraska State Railway Commission.

REPORT OF THE COMMISSION ON REHEARING.

BY THE COMMISSION:

In our original report herein, 40 I. C. C., 512, we found, among other things, that defendant's rates on cattle, sheep, hogs, and horses, in carloads, from Torrington, Wyo., to Omaha, Nebr., were not shown to be unreasonable, but that they were, and for the future would be, unduly prejudicial to the extent that they exceeded or might exceed by more than 1 cent per 100 pounds the rates contemporaneously applicable on the same commodities from Henry, Nebr., to Omaha. The Nebraska State Railway Commission thereafter denied defendant's application for authority to increase the rates from Henry in such amounts as to satisfy our order, and in that connection took certain exceptions to our findings and conclusions and to the fact that that body had not been heard in the case; whereupon we vacated our order and reopened the case for further hearing. At the rehearing the Nebraska State Railway Commission appeared in opposition to any increase in the intrastate rates from Henry. The less-than-carload rates on oil from Omaha, in issue under the complaint, have been adjusted satisfactorily to complainant, in harmony with our findings and order in *The Missouri River-Nebraska Cases*, 40 I. C. C., 201.

It now appears that during the period from 1907 to 1916, inclusive, there were no shipments of horses from Henry or Torrington to Missouri River points, and that the late movement has been in the opposite direction. We shall therefore confine our attention to the rates on cattle, sheep, and hogs shown in the following comparative table, rates stated in cents per 100 pounds:

To Omaha from—	Miles.	Cattle.		Sheep, d. d.		Hogs, s. d.	
		Rate.	Car-mile earnings.	Rate.	Car-mile earnings.	Rate.	Car-mile earnings.
		Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
Torrington.....	512	¹ 31	14.5	² 31	13.3	³ 38	12.6
Henry.....	504	² 24.65	10.8	² 23.65	10.3	³ 33.15	11.2
Differences.....	8	6.35	3.7	7.35	3.0	4.85	1.4

¹ Minimum 24,000 pounds per 36-foot car.
² Minimum 22,000 pounds per 36-foot car.
³ Minimum 17,000 pounds per 36-foot car.

The statement of complainant’s witness, appearing in the original report, that 99 carloads of cattle were driven from Torrington to Henry for shipment, was modified to include cattle driven to Haig, Nebr., the terminus of a branch line of the Union Pacific Railroad, in the vicinity of Henry, and from which the rates to Omaha were and are 23.8 cents on cattle, 23.65 cents on sheep in double-deck cars, and 30.6 cents on hogs in single-deck cars. The exact number driven is unimportant. It also appears that, while the majority of hog shipments has gone to Denver, Colo., both hogs and sheep have been shipped from both points to the Missouri River and eastward, and that, while many or perhaps most have moved on feeding-in-transit rates, at least those representing the added weights would take the rates under consideration. The additional evidence does not controvert, but rather confirms, our former finding that the adjustment is prejudicial to complainant; and the coincident view of the Nebraska commission, respecting a similar situation, was thus expressed in denying defendant’s application, above mentioned:

If the Nebraska commission should grant the application herein and allow the rates on carload shipments of live stock from Henry to be advanced from 3 to 4 cents per 100 pounds, * * * the next station east of Henry, viz, Morrill [8 miles distant], would have an unjust advantage over the shippers and receivers of freight located at Henry.

The following table compares the interstate and intrastate rates to Omaha from pairs of stations nearest the Nebraska boundary on the lines of the defendant and the Chicago & North Western and Union Pacific railroads, radiating from Omaha.

To Omaha from—	Line.	Miles.	Rate.		
			Cattle.	Sheep, d. d.	Hogs, s. d.
			Cents.	Cents.	Cents.
Torrington.....	C., B. & Q.	512	31	31	38
Henry.....	do.....	504	24.65	23.65	33.15
Van Tassel, Wyo.....	C. & N. W.	507	30	29	41
Harrison, Nebr.....	do.....	496	24.65	23.8	33.15
Ardmore, S. Dak.....	C., B. & Q.	501	29	29	40
Mansfield, Nebr.....	do.....	496	23.8	23.8	33.15
Oelricks, S. Dak.....	C. & N. W.	474	29	29	40
Wayside, Nebr.....	do.....	459	24.65	23.8	32.3
Pine Bluffs, Wyo.....	U. P.....	464	28	32	40
Smeed, Nebr.....	do.....	458	24.65	26.35	34
Julesburg, Colo.....	do.....	363	21.25	21.25	27.62
Barton, Nebr.....	do.....	357	20.40	20.40	26.35
Amberst, Colo.....	C., B. & Q.	377	24	25	32.5
Venango, Nebr.....	do.....	368	20.4	20.4	26.77
Laird, Colo.....	do.....	366	24.5	26	32
Sanborn, Nebr.....	do.....	361	20.8	21.2	27.2

The comparisons show that the interstate rates from the border stations are not inconsistent with each other and that the spreads between the interstate and intrastate rates are disproportionate to the slight differences in distance between each pair of stations.

The rates from Torrington were made with relation to the rates from competitive points on the Colorado & Southwestern Railway between Guernsey, Wyo., and Denver. In 1907, by the so-called Aldrich act of the Nebraska legislature, all intrastate class and commodity rates on live stock were reduced 15 per cent. The change was made before the town of Henry came into existence. In 1909 the defendant moved its station, called Pratt, Wyo., just across the state line into Nebraska, and named it Henry. On January 1, 1910, in lieu of the 30-cent rate on cattle which had been in effect from Pratt, the rate from Henry was made 24.65 cents, based on 29 cents, less the Aldrich reduction of 15 per cent, in order to place the Henry rate in line with the rates from other Nebraska points along the same road, and in line with rates from points at similar distances on the North Western and the Union Pacific.

In defense of the rates from Torrington the defendant compares with them the rates of 33 cents on cattle and sheep, and 38 cents on hogs, prescribed for similar distances in *Investigation of Alleged Unreasonable Rates on Meats*, 22 I. C. C., 160, for application from points in New Mexico, Texas, and Oklahoma to Wichita, Kans., Fort Worth, Tex., and Oklahoma City, Okla., and asserts that the conditions of live stock transportation and the density of that traffic are substantially similar and comparable with those here in question. The defendant also cites rates between points in Nebraska, for example, 31.87 cents on cattle and sheep, and 40.37 cents on hogs, from

O'Neill to Seneca, 504 miles, applicable under the Nebraska state distance scale, no specific state commodity rates being in effect, to show that the rates from Henry might be increased to 30 cents on cattle and sheep and 37 cents on hogs, 1 cent less than the present rates from Torrington, and still fall within the distance scale. That scale also represents a reduction of 15 per cent by the Aldrich act. Based upon an average tare weight of 15 tons for stock cars, plus a lading of 12 tons of cattle, 11 tons of sheep, and 8½ tons of hogs, the gross ton-mile revenues are exhibited as 5.38, 5.11, and 5.37 mills, respectively; and in that connection the defendant's gross ton-mile revenue of 5.42 mills, based on a 15-ton stock car, an average live-stock lading of 10 tons and an average haul of 233.5 miles, shown in *1915 Western Rate Advance Case*, 35 I. C. C., 497, 585, 588, is again cited.

An exhibit of the Nebraska commission shows that the average ton-mile revenue from live stock at the gross weight of cars and contents from Henry to Omaha is but a fraction of a mill less than the average earnings from stations in Wyoming, Montana, and South Dakota on the defendant's lines at distances ranging from 502 to 967 miles. Others show that for the year 1910 the average net ton-mile earnings on defendant's traffic originating and terminating in Nebraska was 20 mills, and on traffic originating outside of Nebraska and terminating in or passing through that state, 9 mills; for the years 1915 and 1916, on intrastate traffic, 17 mills; originating without and terminating in the state, 8 mills; passing through the state, 7 mills.

The state commission compares the rate of 31 cents on cattle from Torrington with the same rate from Cheyenne and Denver, the latter being 538 miles from Omaha; but the indicated cities are in Colorado common point territory and are served by competing lines, whereas Torrington is not within the rate group and is served by the defendant alone. Other comprehensive exhibits, designed to prove "the reasonableness of the intrastate rate from Henry," and inferentially to show that the Torrington rate is unreasonable, have had careful consideration; but we think it unnecessary to reproduce them. The showing does not establish the unreasonableness of the Torrington rates.

We find that the rates assailed on cattle, sheep, and hogs are not unreasonable, but that they are unduly prejudicial in their relation to the corresponding rates from Henry to Omaha; and that for the future they should not exceed the corresponding rates contemporaneously applicable, over defendant's line, from Henry to Omaha by more than 2 cents per 100 pounds.

Since this case was submitted the defendant's railroad has passed under federal control. The rates complained of have been increased

by order of the Director General of Railroads, but the relationship of the rates from Torrington and Henry has remained generally the same and the amount of discrimination or undue prejudice has been increased. No amendment to the complaint or supplemental complaint seeking to make the Director General a party defendant has been presented. No order for the future will be made.

McCHORD and AITCHISON, *Commissioners*, dissent.

No. 8885.¹

BALL BROTHERS GLASS MANUFACTURING COMPANY
v.

CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS
RAILWAY COMPANY ET AL.

Submitted December 21, 1916. Decided November 4, 1918.

Finding in *In re Muncie & Western R. R. Co.*, 38 I. C. C., 510, that the Muncie & Western Railroad is a common carrier and that the refusal of the trunk lines serving Muncie to absorb the switching charges of the Muncie & Western to and from Ball Brothers glass works, and Gill Brothers clay pot works while contemporaneously absorbing equal or higher switching charges of the Muncie Belt and the Lake Erie Belt to and from the same industries is unduly prejudicial adhered to. Reparation denied.

Henry B. F. Macfarland, Rollin Warner, and Arthur W. Brady for complainants.

Ernest S. Ballard for defendant trunk lines; *J. W. Clark* for Cleveland, Cincinnati, Chicago & St. Louis Railway Company; *William Fitzgerald* for Chesapeake & Ohio Railway Company of Indiana; *John J. Koch* for Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company; and *L. E. Oliphant* for Lake Erie & Western Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complaints herein filed May 23, 1916, as amended, allege that the practice of the defendant trunk lines entering Muncie, Ind., of refusing since April 1, 1914, to absorb the switching charges of the

¹ This report also embraces No. 8885 (Sub-No. 1), *Muncie & Western Railroad Company v. Cleveland, Cincinnati, Chicago & St. Louis Railway Company et al.*

Muncie & Western Railroad to and from the plants of the Ball Brothers Glass Manufacturing Company, hereinafter referred to as Ball Brothers, and Gill Brothers Clay Pot Works, hereinafter called Gill Brothers, while contemporaneously absorbing the switching charges of the Muncie Belt and the Lake Erie & Western railroads to and from the same industries subjects complainants and their traffic to undue prejudice and disadvantage. We are asked to require the defendants to cease and desist from the unduly preferential practice mentioned; to make allowances to the Muncie & Western equal to its lawful tariff rates; and to award reparation to Ball Brothers on various shipments moving in interstate commerce from April 1, 1914, to May 7, 1916, on the basis of the published tariff charges of the Muncie & Western.

Muncie is served by three belt lines, the Muncie & Western, the Muncie Belt, and the Lake Erie & Western, the latter hereinafter called the Lake Erie Belt, all of which reach the plant of Ball Brothers. The Muncie & Western and Lake Erie Belt serve Gill Brothers. The history of the Muncie & Western is stated in *In re Muncie & Western R. R. Co.*, 38 I. C. C., 510, and need not be repeated here. It is sufficient to say that its incorporation was deemed necessary because the volume and the nature of the business of Ball Brothers required prompt service, which was not furnished by the other belts, and because the latter refused connection with new trunk lines then being extended to Muncie. These connections were greatly desired not only by Ball Brothers and other industries at Muncie, but also by the citizens of that place. The switching charge of the Muncie and the Lake Erie belts was and is \$3 per car, except on Indiana coal. On competitive traffic the trunk lines serving Muncie absorbed and still absorb this charge. The switching charges of the Muncie & Western prior to November 5, 1914, were \$3.50 per loaded car on outbound traffic and \$2.50 per loaded car on inbound traffic, except on Indiana coal. Effective November 5, 1914, this charge was reduced to \$2 a car on all carload shipments, except Indiana coal, on which the charge is \$1.50 a car. On competitive traffic the trunk lines serving Muncie absorbed the switching charges of the Muncie & Western prior to April 1, 1914. Effective on that date and subsequent to our original report in the *Industrial Railways Case*, 29 I. C. C., 212, decided January 20, 1914, the absorption of the Muncie & Western's switching charges was discontinued on interstate traffic. The defendant trunk lines also attempted to cancel the provision for absorbing switching charges of the Muncie & Western on intrastate traffic, but the Public Service Commission of Indiana declined to allow this cancellation to become effective, so that the Muncie rates have continued to apply over the Muncie & Western

from and to Ball Brothers and Gill Brothers plants on intrastate traffic. In *In re Muncie & Western R. R. Co.*, 30 I. C. C., 434, decided May 5, 1914, we held that the Muncie & Western was a plant facility of Ball Brothers and that the allowance of switching charges theretofore paid to the Muncie & Western by the trunk lines, and which were absorbed by them in the line-haul rates were without justification. However, upon rehearing and in the light of the decision of the Supreme Court in the *Tap Line Cases*, 234 U. S. 1, we modified our findings in the original report and found the Muncie & Western to be a common carrier; that the switching service performed by the Muncie and the Lake Erie belts to and from the plants of Ball Brothers and Gill Brothers apparently did not differ substantially from the switching service performed by the Muncie & Western to and from the same industries; and that the refusal of the trunk lines serving Muncie to absorb the switching charges of the Muncie & Western to and from Ball Brothers and Gill Brothers while contemporaneously absorbing the switching charges of the Muncie and the Lake Erie belts to and from the same industries was unjustly discriminatory in contravention of section 3 of the act from which discrimination we stated the trunk lines serving Muncie would be expected to cease and desist. We further stated that upon the information at our disposal at that time the rates of the Muncie & Western then in effect were not excessive for the services performed. *In re Muncie & Western R. R. Co.*, 38 I. C. C., 510.

Effective May 8, 1916, the defendant trunk lines made an allowance to the Muncie & Western out of the Muncie rate of 3.4 cents per ton, net or gross, according to the application of the Muncie rate. The average weight of freight per car from and to Ball Brothers' plant is stated to be approximately 26 tons, so that this allowance averaged approximately 88 cents per car. On June 15, 1916, the trunk lines reduced this allowance to 85 cents per loaded car, which is still in effect. For the defendants it was stated that these allowances were made on the theory that the Muncie & Western is a plant facility of Ball Brothers and were computed upon the basis announced by us in the *Chicago West Pullman & Southern R. R. Co. Case*, 37 I. C. C., 408. The Muncie & Western has never acquiesced in or accepted these allowances, and has collected its regular published switching charges from shippers. Most of the evidence introduced by the defendant trunk lines was as to the character of the services performed by the Muncie & Western. These defendants still insist that the Muncie & Western is not a common carrier in the true sense of the word, but a mere plant facility of Ball Brothers. The testimony given on rehearing in *In re Muncie & Western Railroad*, *supra*, was made a part of the record in this case. Upon the

whole record we adhere to the finding in our report on rehearing *In re Muncie & Western R. R. Co., supra*, and hold that the Muncie & Western is a common carrier.

The defendants further contend that even if the Muncie & Western is a common carrier, it is not entitled to any allowance out of the Muncie rate and cite *Manufacturers Railway Co. v. St. L., I. M. & S. Ry. Co.*, 28 I. C. C., 93. In that case we held that the trunk lines at St. Louis, Mo., by their action in canceling the allowances to the complainant railway while continuing to absorb the charge of the Terminal Railroad Association, the stock of which they owned and which constituted their united terminal, did not thereby subject the complainant railway or its shippers to undue prejudice or disadvantage. The Lake Erie & Western owns the Lake Erie Belt and the Cleveland, Cincinnati, Chicago & St. Louis Railway, through ownership of 666 shares of the 1,000 shares of the Muncie Belt, controls the latter. This case does not present that condition of common ownership and reciprocal relation described in the case cited.

The capital stock of the Muncie & Western is \$50,000 and there is no bonded indebtedness. The cash cost of the railroad to June 30, 1916, is said to have been \$37,687.96. It leases its right of way from Ball Brothers, but owns and maintains 3.93 miles of track, of which about 2 miles are within the plant limits of Ball Brothers. It owns no car or engine equipment, its motive power being furnished by the Muncie Belt, which performs similar service for the Lake Erie Belt, the cost of operation being divided among the three lines in proportion to the number of cars handled. It transports freight exclusively, and the principal service is that of switching cars between the two industries on its tracks and trunk line connections. There is very little intraplant movement. The total number of revenue cars switched by the Muncie & Western, as shown by its annual report for the year ended June 30, 1916, during which period the \$2 switching charge was in effect, was 6,461. At \$2 per car the revenue derived would be \$12,922, but the total earnings of the Muncie & Western for the year ended June 30, 1916, is shown as \$13,041.36. The operating expenses for the same period are shown as \$14,123.59, indicating a deficit of \$1,082.23. The above figures do not include taxes of \$647.93 and \$1 rental for right of way. It is pointed out that if interest on the actual cash investment of \$37,687.96 at 5 per cent, depreciation at 2 per cent, and reserve for damages at 5 per cent of estimated revenue be added, the cost per loaded car for the above-mentioned period would be \$2.795. The only salaries paid by the Muncie & Western are \$125 per month to its general manager and \$10 per week to a clerk. It is stated on brief that the Muncie & Western's rates are intended merely to cover cost of service and that the

figures shown above amply demonstrate that those rates might reasonably be higher. It is also noted that the defendants themselves computed the cost to the Muncie & Western on the common-carrier basis for the year ended June 30, 1915, at \$1.92 per car.

There is nothing upon the present record tending to show that the present rates of the Muncie & Western are excessive or unreasonable. We accordingly adhere to our finding in *In re Muncie & Western R. R. Co., supra*, to the effect that the refusal of the trunk lines serving Muncie to absorb the switching charges of the Muncie & Western to and from Ball Brothers and Gill Brothers, while contemporaneously absorbing equal or greater switching charges of the Muncie Belt and Lake Erie Belt to and from the same industries results in undue prejudice against complainants in contravention of section 3 of the act.

Ball Brothers' claim for reparation is based on the undue prejudice found to exist. There is no evidence that complainant has suffered any damage by reason of any competition, and damage is not proved with that degree of certainty necessary to warrant an award of reparation in discrimination cases.

No amendment to either complaint and no amended complaint seeking to make the Director General of Railroads a party defendant has been presented. No order for the future will be made.

51 I. C. C.

No. 9725.

CONCRETE ENGINEERING COMPANY

v.

PENNSYLVANIA COMPANY ET AL.

Submitted November 22, 1917. Decided October 29, 1918.

Rate on iron or steel forms or molds for concrete construction, in carloads, from Canton and Martin's Ferry, Ohio, to San Francisco, Cal., found to have been unreasonable. Reparation awarded.

J. A. Kuhn for complainant.

F. E. Andrews for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

The complainant, a corporation engaged in concrete construction at Omaha, Nebr., alleges, by complaint filed June 7, 1917, that the rates charged on five carloads of iron or steel forms or molds, for concrete construction work, shipped from Canton and Martin's Ferry, Ohio, to San Francisco, Cal., between July 8, 1915, and June 17, 1916, inclusive, were unreasonable and unduly prejudicial to the extent that they exceeded \$1 per 100 pounds, the rate subsequently established. It asks reparation. Rates are stated in amounts per 100 pounds.

The shipments, aggregating 262,523 pounds, moved over the defendants' lines to San Francisco, one from Canton and four from Martin's Ferry. The joint fifth-class rate of \$1.85, minimum 36,000 pounds, governed by the western classification, was legally applicable. Charges were collected on the Canton shipment at that rate, but upon the four shipments from Martin's Ferry the charges were assessed at a rate of 90 cents and undercharges amounting to \$1,916.81 are outstanding. On January 31, 1917, the defendants established a joint commodity rate of \$1. In *Transcontinental Commodity Rates*, 48 I. C. C., 79, we approved an increase in this rate to \$1.25.

The standard patented forms manufactured by the complainant consist of sheet steel, bent, in depths ranging from 6 to 12 inches, and punched with holes through which the forms are nailed to temporary woodwork. After the concrete has been poured into the forms and has set, the forms are removed and used again. They are shipped nested and the average weight of the shipments was 52,505 pounds, valued at about 2.2 cents per pound.

The complainant contends that it was discriminated against in favor of other manufacturers located at Canton and Youngstown, Ohio, who manufacture similar forms of lighter-gauge metal for like use and ship to the Pacific coast at a joint commodity rate of 90 cents, minimum 40,000 pounds, in effect during the greater part of the period of movement on "metal concrete reinforcement" and other similar materials made of bar, wrought, and sheet iron, which are embedded in the concrete and become a permanent part of the structures. This rate was inapplicable to forms or molds similar to those shipped. Metal forms for concrete construction compete on the Pacific coast with wooden forms made locally, but not with metal concrete reinforcement.

For the defendants it was stated that the volume of movement of the metal forms for concrete construction is small as compared with that of materials used to reinforce concrete; that the 90-cent rate was established to meet keen water competition, relief being granted the carriers from the fourth section with respect to the maintenance of higher rates to intermediate points; and that therefore the commodity rate on materials for concrete reinforcement was not a proper measure of the reasonableness of the class rate assailed. It was testified on their behalf that the commodity rate of \$1 was established upon representations made to the carriers that a lower rate was necessary in order to move the traffic by the all-rail routes, and asserted that while this rate was not unremunerative it was below a maximum reasonable rate.

We find that the rates legally applicable were unreasonable to the extent that they exceeded \$1.25 per 100 pounds; that complainant made the shipments as described and on the shipment from Canton paid and bore the charges at the legally applicable rate; that it was damaged to the extent that the charges paid exceeded those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation on the shipment mentioned in the sum of \$364.56, with interest, from the Pennsylvania Company, Chicago, Milwaukee & St. Paul Railway Company, Union Pacific Railroad Company, and Southern Pacific Company. Defendants are authorized to waive the outstanding undercharges on the shipments from Martin's Ferry to the basis herein found reasonable.

An order awarding reparation will be entered.

51 I. C. C.

No. 9821.

PHILLIPS EXCELSIOR COMPANY

v.

TENNESSEE, ALABAMA & GEORGIA RAILROAD
COMPANY.

Submitted November 26, 1917. Decided October 29, 1918.

Rates charged on pine wood, in carloads, from certain points in Georgia to Chattanooga, Tenn., found to have been illegal. Reparation awarded.

John S. Fletcher for complainant.

H. F. Bohr for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

The complainant, G. D. Andrews, is engaged in the excelsior business at Chattanooga, Tenn., under the name of Phillips Excelsior Company and is the successor in interest of F. H. Phillips, formerly doing business under the same trade name. By complaint filed August 2, 1917, as amended, he alleges that the charges collected on 30 carloads of wood shipped from certain points in Georgia to Chattanooga, between July 24, 1916, and January 30, 1917, inclusive, were unlawful and unreasonable. Reparation is asked.

The shipments consisted of green pine wood in the round, unsplit and unbarked, sawed into bolts 48 inches long and from 4½ to 24 inches in diameter, and were used in the manufacture of excelsior. They moved over the defendant's line and transportation charges were collected in the sum of \$510.87, at per-car rates, based on 40,000 pounds, excess in proportion, of \$8.50 from Rock Creek, \$9.50 from Flintstone and Eagle Cliff, \$10.50 from High Point, Cooper Heights, Cassandra, and Malicoat, and \$13.50 from Chelsea, Ga., applicable under the defendant's tariffs on "logs, except cedar, and blocks, wooden; fence posts, wooden; heading bolts, hoop poles, piles, wooden; poles, telegraph and telephone; shingle bolts; stave bolts." Another of defendant's tariffs provided per-car rates on "wood, other than chestnut," minimum 12 cords, of \$8.50 from Rock Creek and Flintstone, \$9.50 from Eagle Cliff, High Point, Cooper Heights, Cassandra, and Malicoat, and \$10.50 from Chelsea. It is complainant's contention that the description "wood, other than chestnut," properly may be construed as including the wood shipped and that the rates provided under such description were

legally applicable thereto. The fact that heading bolts, shingle bolts, and stave bolts were specifically provided for leads to the conclusion that the defendant's failure to specifically provide for bolts of the kind shipped was intentional.

We find that the rates on "wood, other than chestnut," were legally applicable; that F. H. Phillips, trading as the Phillips Excelsior Company, made the shipments as described and paid and bore the charges thereon; that he has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rates legally applicable; and that the complainant, his successor, is entitled to reparation in the sum of \$196.33, with interest.

An order awarding reparation will be entered.

51 I. C. C.

No. 9871.

HERCULES POWDER COMPANY

v.

NORFOLK & WESTERN RAILWAY COMPANY ET AL.

Submitted February 9, 1918. Decided October 29, 1918.

Rates on wet nitrocellulose, in carloads, from Hopewell, Va., to Lake Junction, N. J., found to have been unreasonable. Reparation awarded.

H. J. Taggart for complainant.

Alexander H. Elder for Central Railroad Company of New Jersey.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

The complainant, a corporation engaged in the manufacture of explosives at Lake Junction, N. J., alleges, by complaint seasonably filed, that the rates charged by the defendants on 59 carloads of nitrocellulose, wet, shipped from Hopewell, Va., to Lake Junction, between May 14 and September 25, 1915, inclusive, were unreasonable and unjustly discriminatory, to the extent that they exceeded 42 cents per 100 pounds. Reparation is asked. Rates are stated in cents per 100 pounds.

The shipments moved over the Norfolk & Western Railway to Norfolk, Va., New York, Philadelphia & Norfolk Railroad to Delmar, Del., the Philadelphia, Baltimore & Washington and Pennsylvania railroads to Flemington, N. J., and the Central Railroad of New Jersey beyond, 471 miles. Charges on 23 of the shipments which moved prior to August 1, 1915, were collected at the applicable combination first-class rate of 69.4 cents, minimum 30,000 pounds, composed of rates of 47.3 cents to Flemington and 22.1 cents beyond, and on the remaining 36 shipments, at the applicable commodity rate of 47.3 cents.

During the period of movement a commodity rate of 42 cents applied on this traffic from Hopewell to Haskell, N. J., a point in the same general territory as Lake Junction, over the Norfolk & Western to Norfolk, and New York, Philadelphia & Norfolk, Pennsylvania, and the Erie Railroad, a distance of 472 miles.

On September 30, 1915, the 42-cent rate was established from Hopewell to Lake Junction over the route of movement and on February 10, 1916, from Hopewell to Haskell, in connection with

51 I. C. C.

the Central Railroad of New Jersey over the route through Richmond, Va., 488 miles.

For the Central Railroad of New Jersey, the only defendant represented at the hearing, it was contended that the rates charged were subnormal. Its witness testified that the 42-cent rate to Haskell was based on a water-compelled rate of 37 cents to New York, N. Y., plus a 5-cent arbitrary beyond. Authority for the arbitrary is not shown. At the time the shipments moved the rates applicable on nitrocellulose, wet, from New York were 20 cents to Haskell and 22.1 cents to Lake Junction. Lake Junction and Haskell are about equal distances from tidewater. It is also urged that the route to Lake Junction necessitates four branch-line hauls, while the route to Haskell requires but two branch-line hauls. A rate of 56.7 cents on high explosives from Lake Junction to Lynchburg, Va., 418 miles, was cited, but the minimum thereunder is only 20,000 pounds. The 69.4-cent rate yielded earnings of 29.47 mills per ton-mile and based on 43,126 pounds, the average loading of the shipments, \$299.29 per car, or 63.5 cents per car-mile; the 47.3-cent rate, 20.1 mills per ton-mile and \$203.99 per car, or 43.3 cents per car-mile; and the 42-cent rate to Haskell, 17.8 mills per ton-mile and based on the average loading of the shipments, \$181.13 per car, or 38.38 cents per car-mile.

We find that the rates assailed were unreasonable to the extent that they exceeded 42 cents per 100 pounds; that the complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record, and the complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the date on which the charges were paid, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified, we will consider the entry of an order awarding reparation.

51 I. C. C.

No. 10065.
NATIONAL SUPPLY COMPANY
v.
CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY.

Submitted April 22, 1918. Decided October 29, 1918.

Rates on crushed stone, in carloads, from Louisville, Nebr., to Northboro and Macedonia, Iowa, found to have been unreasonable. Shipments from Cedar Creek, Nebr., to Shenandoah, Iowa, found to have been overcharged. Reparation awarded.

George A. Whitney for complainant.

Kenneth F. Burgess for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

The complainant is a corporation engaged in jobbing building material at Lincoln, Nebr. By complaint seasonably filed it alleges that the rates charged by the defendant on two carloads of crushed stone shipped from Louisville, Nebr., to Northboro and Macedonia, Iowa, in June and October, 1915, were unreasonable and in violation of the fourth section in that they exceeded the aggregate of the intermediate rates contemporaneously in effect; also that the charges collected by the defendant on two carloads of the same commodity shipped August 21, 1916, from Cedar Creek, Nebr., originally destined to Council Bluffs, Iowa, but subsequently diverted to Shenandoah, Iowa, were unreasonable to the extent that the charges up to Council Bluffs exceeded those that would have accrued at a rate of 40 cents per ton. Reparation is asked.

Charges were collected on the shipment to Northboro, which weighed 108,400 pounds, in the sum of \$97.56, at the through class E rate of 9 cents per 100 pounds, governed by the western classification. The intermediate rates contemporaneously in effect were 50 cents per net ton from Louisville to Pacific Junction, Iowa, and 68 cents per net ton from Pacific Junction to Northboro, a total of \$1.18. On May 25, 1916, the defendant established a rate of \$1.08 per ton from and to these points.

Charges were collected on the shipment to Macedonia, weighing 105,300 pounds, in the sum of \$73.71, at the through class rate of 7

cents per 100 pounds, governed by the western classification. At the time of movement the defendant maintained rates of 40 cents per ton to Pacific Junction and 43 cents per ton beyond, a total of 83 cents, which rate was subsequently published as a through rate from and to these points.

For the defendant it was admitted that the rates charged on these shipments were unreasonable to the extent that they exceeded the subsequently established rates, and a willingness was expressed to make reparation on those bases.

On the shipments to Shenandoah, aggregating 171,200 pounds, charges were collected on basis of rates of 50 cents per ton to Council Bluffs and 52 cents beyond. A rate of 40 cents per ton was legally applicable from Cedar Creek to Council Bluffs and these shipments were therefore overcharged 10 cents per ton.

We find that the rates charged on the shipments to Northboro and Macedonia were unreasonable to the extent that they exceeded the rates subsequently established and that the rate charged on the shipments to Shenandoah was illegal to the extent that the component from Cedar Creek to Council Bluffs exceeded 40 cents per ton. We further find that the complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent that the charges paid exceeded those that would have accrued at the rates herein found reasonable and legal and that it is entitled to reparation in the sum of \$77.61, with interest.

An appropriate order will be entered.

51 I. C. C.

No. 9924.

LUMBERMEN'S ASSOCIATION OF CHICAGO ET AL.

v.

ANN ARBOR RAILROAD COMPANY ET AL.

Submitted June 7, 1918. Decided November 2, 1918.

By complaint filed October 24, 1917, rates on lumber, in carloads, from Chicago, Ill., to points in central freight association and eastern trunk line territories are attacked as being unreasonable and unduly prejudicial. *Held:*

1. Effective June 25, 1918, the Director General of Railroads, in exercise of powers conferred upon the President by the federal control act, initiated rates higher than those complained of. Rates so initiated can only be reviewed by us upon complaint as prescribed in the federal control act.
2. Complainant, although given an opportunity to bring in the Director General, as an additional defendant, has not taken such action.
3. Complaint dismissed.

Elmer H. Adams and *James B. Wescott* for complainants.

D. P. Connell for defendants.

REPORT OF THE COMMISSION

DIVISION 3. COMMISSIONERS HARLAN, HALL, AND ANDERSON.

The title complainant is an association representing in its membership a large proportion of the wholesale, retail, and manufacturing lumber interests of Chicago, Ill. Eight of the Chicago lumber companies joined individually in the complaint, in which it is alleged that the rates on lumber from Chicago to points in central freight association and eastern trunk line territories are unjust and unreasonable, in violation of section 1; also that they are unduly discriminatory, in violation of sections 2 and 3, in comparison with rates on lumber from St. Louis, Mo., East St. Louis, Thebes, and Cairo, Ill., Evansville and New Albany, Ind., Louisville, Ky., Cincinnati, Ohio, Marinette, Wis., and points taking the same rates to the same destinations. The Commission is asked to prescribe the rates effective before certain increases from Chicago, effective in July and September, 1917, or such other rates as may be found reasonable and just, and to require that lumber from Chicago be given commodity rates instead of class rates.

Eastbound lumber in carloads from Chicago takes sixth-class rates, and has been on that basis for many years. Following the decisions in *The Fifteen Per Cent Case*, 45 I. C. C., 303, and *C. F. A. Class Scale* 51 I. C. C.

Case, 45 I. C. C., 254, the rates from Chicago were increased, effective to eastern trunk line points July 16, 1917, and to central freight association points September 22, 1917. The extent of these increases is indicated by the following statement:

Increases in lumber rates from Chicago effective July 16 and September 22, 1917.

Destination.	Distance.	Former rate.	Increased rate.	Amount of increase.	Rate of increase.
	Miles.	Cents.	Cents.	Cents.	Per cent.
South Bend, Ind.....	86	8.4	9.5	1.1	13.1
Elkhart, Ind.....	101	8.4	10	1.6	19
Terre Haute, Ind.....	177	9.5	12	2.5	26.3
Indianapolis, Ind.....	183	9.5	12.5	3	31.6
Vincennes, Ind.....	234	11	13.5	2.5	22.7
Kalamazoo, Mich.....	141	9.5	11.5	2	21
Battle Creek, Mich.....	164	9.5	12	2.5	26.3
Detroit, Mich.....	272	10.5	14	3.5	33.3
Bay City, Mich.....	306	10.5	15	4.5	42.9
Toledo, Ohio.....	233	10.5	13.5	3	28.6
Cleveland, Ohio.....	339	12.6	15	2.4	19
Columbus, Ohio.....	315	12.6	15	2.4	19
Cincinnati, Ohio.....	285	12.6	14.5	1.9	15.1
Pittsburgh, Pa.....	468	15.8	17.5	1.7	10.8
Buffalo, N. Y.....	525	15.8	17.5	1.7	10.8
Rochester, N. Y.....	591	19.5	22	2.5	12.8
Syracuse, N. Y.....	671	21	24	3	14.3
Utica, N. Y.....	724	23.7	27	3.3	13.9
Albany, N. Y.....	819	25.2	29	3.8	15.1
New York, N. Y.....	908	26.3	30	3.7	14
Boston, Mass.....	979	28.3	32	3.7	13.1
Portland, Me.....	1,051	28.3	32	3.7	13.1
Philadelphia, Pa.....	836	24.3	28	3.7	15.2
Baltimore, Md.....	808	23.3	27	3.7	15.9
Norfolk, Va.....	993	23.3	27	3.7	15.9
Roanoke, Va.....	721	23.3	27	3.7	15.9

The present rates on lumber from St. Louis and the Ohio River crossings to points in central freight association and eastern trunk line territories are commodity rates. As the increases permitted by the decisions above cited were restricted to class rates, it follows that the increases from Chicago have changed materially the relationship formerly existing between the rates from Chicago and from competing points of shipment. The competition of St. Louis is particularly stressed by complainants, and it will serve the present purpose to compare the rates from Chicago and St. Louis, both before and after the recent increases from Chicago. A witness for complainants testified that an examination of lumber shipments of his firm and some others for about 11 months of 1917 showed an average loading of 58,000 pounds per car. We may assume that the average loading of all lumber moving in official classification territory is at least 50,000 pounds, and for the purpose of comparison this figure has been used in the following table:

Comparison of rates and earnings on eastbound lumber from Chicago, Ill., and St. Louis, Mo.

¹ Based upon average loading of 50,000 pounds.

Examination of the rates from other competing points, as well as from St. Louis, for similar distances in central freight association territory, reveals an apparent maladjustment as between St. Louis and those points, although the disparity is less than in the comparison of St. Louis and Chicago, as indicated by the following examples:

From—	To—	Distance.	Rate.
		<i>Miles.</i>	<i>Cents.</i>
Chicago, Ill.....	Vincennes, Ind.....	234	13.5
St. Louis, Mo.....	Indianapolis, Ind.....	241	8.5
Cairo, Ill.....	Terre Haute, Ind.....	233	9.5
Evansville, Ind.....	Connersville, Ind.....	236	9.5
Louisville, Ky.....	Columbus, Ohio.....	246	12.6
Cincinnati, Ohio.....	Elkhart, Ind.....	241	10.5
Chicago, Ill.....	Cleveland, Ohio.....	339	15
St. Louis, Mo.....	South Bend, Ind.....	342	10.5
Cairo, Ill.....	Connersville, Ind.....	400	11.6
Evansville, Ind.....	Columbus, Ohio.....	364	12.6
Louisville, Ky.....	Detroit, Mich.....	363	12.6
Cincinnati, Ohio.....	Bay City, Mich.....	369	12.6
Marionette, Wis.....	South Bend, Ind.....	346	12.6

The distances used in these tables are not in all cases the shortest, but are over routes commonly used.

The discriminatory character of the present adjustment as between Chicago and competing points is apparent and is admitted by the defendants. They insist, however, that the Chicago rates should not be reduced, but that the rates from competing points should be increased to such an extent as will place them on a relative basis with Chicago. Their witness, the chairman of the central freight association, stated his understanding of the history of the lumber rates applying through and from the various river crossings, and the theory of their relationship to one another and to the rates from Chicago. It is unnecessary to discuss this testimony. The witness stated that the defendants had applied the increases permitted under the decision in *The Fifteen Per Cent Case* to the lumber traffic as to other traffic moving under class rates, feeling that their need of revenue would not permit delay; that the defendants were expecting similar authority in the same proceeding to increase their commodity rates on lumber, which would enable them to restore the former relationship between Chicago and other points; and that upon the conclusion of that proceeding it was their purpose to file applications under section 15 for permission to place all of their lumber rates in central freight association territory on the sixth-class basis, and to make a corresponding increase in the rates applying interterritorially. This, it is claimed, would place the lumber rates substantially upon a mileage basis and would remove whatever discrimination now exists between shipping points.

Under date of March 12, 1918, subsequent to the hearing in this case, the Commission issued an order in *The Fifteen Per Cent Case*, providing, among other things, that the carriers might increase their commodity rates on lumber and forest products in official classification territory, including joint rates between official classification territory on the one hand and southeastern territory, the southwest, and points on or east of the Missouri River on the other, by 1 cent per 100 pounds.

CONCLUSIONS.

Assuming that the carriers will avail themselves of the permission given in the order of March 12, it is apparent that the relationship of lumber rates will still be unduly prejudicial to Chicago, although in less degree than at present.

In neither *The Fifteen Per Cent Case* nor the *C. F. A. Class Scale Case* was the authority given the carriers to increase their class rates as applied to lumber specifically. The investigations were general and the findings general. The decision of June 27, 1917, in the former case was essentially similar to that in *The Five Per Cent Case*,

32 I. C. C., 325, the nature and scope of which were thus defined in *Globe Soap Co. v. A. & S. Ry. Co.*, 40 I. C. C., 121:

The permission given in *The Five Per Cent Case*, *supra*, was necessarily general. That case did not approve any specific rate as reasonable in itself or as properly adjusted with respect to other rates, nor did it justify in advance any rate which might be published as a result thereof. The act casts upon the carrier the burden of proof to show that a rate increased after January 1, 1910, is just and reasonable and that burden is not removed by a general permission of the Commission, such as that relied upon by the defendants, for it is the total rate which must be justified and not the amount of the increase.

In the present proceeding the defendants made no attempt to justify their increased rates on lumber from Chicago further than to assert their need of increased revenue and to state their belief that lumber may properly take sixth-class rates. In *Cadillac Lumber Exchange v. A. A. R. R. Co.*, 43 I. C. C., 636, cited by defendants, the Commission considered primarily the relationship of rates, and such finding as is there made respecting the reasonableness of rates from two Michigan points should not be given controlling weight in this proceeding. The revenue need was established in *The Fifteen Per Cent Case*, but we have no evidence that the carriers were entitled to a greater increase in their rates on lumber from Chicago than from competing points. The defendants should be required to establish and maintain on lumber in carloads from Chicago to points in central freight association and eastern trunk line territories rates which will not exceed by more than 1 cent per 100 pounds the rates applied to such traffic before the increases of July and September, 1917, hereinbefore mentioned.

ANDERSON, *Commissioner*:

The foregoing is the report of the examiner which was served upon the parties. No exceptions thereto were filed and oral argument was waived.

Since the submission of the case, the Director General, in exercise of powers conferred upon the President by the federal control act, approved March 21, 1918, has, by General Order No. 28, bearing date of May 25, 1918, initiated and directed the establishment on June 25, 1918, of rates which exceed the rates attacked, thereby fixing the rates to be applied for the future on the traffic here under consideration. Although given opportunity to amend the complaint so as to include the Director General as party defendant, complainant has not done so. However, effective October 22, 1918, the rates from Chicago were further modified, and the present rates are apparently satisfactory to complainant. No action can be taken by the Commission upon the present pleadings.

The complaint will be dismissed.

IN THE MATTER OF THE CONTROL OF WATER CARRIERS BY RAILROAD CARRIERS.

No. 7055.

GRAND TRUNK RAILWAY COMPANY OF CANADA—OWNERSHIP AND OPERATION OF DETROIT RIVER CAR FERRIES.

Submitted July 20, 1918. Decided October 24, 1918.

Upon application of the Grand Trunk Railway Company of Canada, under the provisions of section 5 of the act to regulate commerce as amended by the Panama Canal act, to continue its ownership and operation of certain car ferryboats plying on the Detroit River, *Held:*

1. That the existence of paralleling rail lines of petitioner and paralleling all-rail routes in which petitioner participates makes it possible for petitioner to compete with its ferryboats.
2. That the existing specified service by water is being operated in the interest of the public and is of advantage to the convenience and commerce of the people, and that an extension thereof will neither exclude, prevent, nor reduce competition on the route by water under consideration.

W. K. Williams for Grand Trunk Railway Company of Canada.

REPORT OF THE COMMISSION.

McCHORD, Commissioner:

The Grand Trunk Railway Company of Canada petitions us for authority under the provisions of section 5 of the act to regulate commerce as amended by the Panama Canal act, to continue its ownership and operation of car ferries across the Detroit River, between Detroit, Mich., and Windsor, Ontario.

The petitioner and its allied lines operate a system of railway extending from Chicago, Ill., and other Lake Michigan ports, to St. Lawrence River points and Atlantic ports. One of its main east-and-west lines extends through Port Huron, Mich., and Sarnia, Ontario, the connecting link between these two points being a tunnel under the St. Clair River. Another of the main east-and-west lines extends easterly to Detroit, where it is intersected by the Detroit River; from Windsor, which is opposite Detroit, it extends easterly to Buffalo, N. Y., and other points. To connect this line the petitioner operates car ferryboats across the Detroit River between Detroit and Windsor. These car ferryboats are three in number and are known as the *Lansdowne* and *Huron*, each with a capacity of 16 cars, and the *Great Western*, with a capacity of 12 cars. Petitioner also operates a line of railway between Port Huron and Detroit.

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It further appears, from tariffs on file with us, that petitioner is a party to through all-rail routes which parallel its own line through Detroit and Windsor. We find that, by means of its line through Port Huron and Sarnia and of the paralleling all-rail routes in which it participates, petitioner may compete for traffic with its Detroit River ferryboats within the meaning of the act.

It is stated of record that more water-borne traffic passes Detroit than any other point in the world, and that therefore it has been considered unfeasible to construct a bridge across the Detroit River at that point. But, for all practical purposes, the ferryboats here in question constitute a bridge connecting petitioner's line from Detroit to the west with its line from Windsor to the east. That is to say the boats, except that they do not handle locomotives or tenders, take the place and perform the functions of a bridge. They are operated as a part and parcel of the railroad and not as a separate organization. All of the traffic handled by the boats is hauled in cars. All of the passenger traffic and practically all of the freight traffic handled is through traffic from or to points beyond Detroit or Windsor.

From Detroit to eastern points and from eastern points to Detroit, petitioner's route via Windsor and the car ferries in question furnishes an expeditious service as compared with its all-rail route via Port Huron and Sarnia. The Detroit docks of the ferryboats are very near petitioner's freight house, and through traffic handled by the boats escapes going through the Detroit terminals. For this reason, a large part of the through traffic to, from, and beyond Detroit is handled via Windsor instead of via Port Huron and Sarnia. It also appears that the clearance through the Port Huron-Sarnia tunnel is too low for some of the larger freight cars, thus necessitating their handling via the Detroit-Windsor ferries.

Petitioner absorbs the cost of this ferryboat service out of its rail revenue. If the boats were independently operated, the amount of the absorption would very probably be greater, as independent operators would demand a profit over and above the cost of the service. The through rates via petitioner's line through Detroit and Windsor are the same as via its line through Port Huron and Sarnia, and the same as via the Michigan Central, which operates a tunnel under the Detroit River, and via the Pere Marquette, which operates ferryboats across the river at Detroit. In *P. M. and B. & L. E. R. R. Cos. Operation of Car-Ferry Boats*, 34 I. C. C., 86, we authorized the Pere Marquette to continue the operation of its car ferries between Detroit and Windsor.

The rates, rules, and regulations applicable via the water service under consideration are filed with us as a part of the petitioner's tariffs.

We find and conclude that the existing specified ferryboat service of petitioner is being operated in the interest of the public and is of advantage to the convenience and commerce of the people, and that a continuation thereof will neither exclude, prevent, nor reduce competition on the water route under consideration.

An appropriate order will be entered.

No. 9555.

CROSSETT LUMBER COMPANY, INCORPORATED,

v.

ARKANSAS & LOUISIANA MIDLAND RAILWAY
COMPANY ET AL.

Submitted August 27, 1917. Decided October 29, 1918.

Rates on pine lumber, in carloads, from Crossett, Ark., to Baltimore, Md., Philadelphia, Pa., New York, N. Y., Ottawa, Ontario, and other eastern destinations found reasonable. Complainant not shown to have been damaged by the undue prejudice alleged. Complaint dismissed.

G. F. Thomas for complainant.

T. J. Shelton for Arkansas & Louisiana Midland Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

It is here alleged that the rates charged by the defendants on numerous carloads of pine lumber shipped between March 1, 1915, and January 8, 1916, from Crossett, Ark., to certain eastern destinations were unreasonable and unduly prejudicial. Reparation is asked. Rates are stated in cents per 100 pounds.

The shipments moved by way of defendants' lines over various routes. Charges were collected on some of the shipments at the legally applicable rates, on the others at lower rates, and payment of the undercharges has been deferred pending the decision of this case.

Crossett is on the Arkansas & Louisiana Midland Railway, which, together with its predecessors, will be referred to hereinafter as the Midland. It is 53 miles north of Monroe, La., at which point the Midland connects with the Vicksburg, Shreveport & Pacific Railway.

Prior to March 1, 1915, blanket joint commodity rates applied on pine lumber to eastern destinations from points in Louisiana on the Vicksburg, Shreveport & Pacific and on a number of short lines connecting therewith, including Crossett and all other points on the Midland, and all points on the Tremont & Gulf Railway. The latter connects with the main line of the Vicksburg, Shreveport & Pacific at Tremont, 20 miles west of Monroe. On March 1, 1915, the rates from Crossett and various other points in the same general territory were increased, but the rates from certain points on the Midland other than Crossett and from all points in Louisiana on the Vicksburg, Shreveport & Pacific and the Tremont & Gulf were continued in effect. The increased rates from Crossett were not published in strict conformity with our tariff rules.

The following table shows the rates in effect from Crossett to representative destinations prior to March 1, 1915, and those established on that date, together with the average short-line distances and ton-mile and car-mile earnings:

From Crossett to—	Miles.	Rates. ¹	Earnings.		Rates. ³	Earnings.	
			Per ton-mile.	Per car-mile. ²		Per ton-mile.	Per car-mile.
		Cents.	Mills.	Cents.	Cents.	Mills.	Cents.
Baltimore, Md.....	1,227	30	4.889	11.00	32	5.21	11.40
Philadelphia, Pa.....	1,323	31	4.686	10.54	33	4.98	11.20
New York, N. Y.....	1,413	33	4.670	10.50	35	4.94	11.14
Rochester, N. Y.....	1,428	32.5	4.55	10.24	32.5	4.55	10.24
Syracuse, N. Y.....	1,497	33	4.410	9.92	34	4.54	10.23
Utica, N. Y.....	1,550	33	4.259	9.53	34	4.38	9.87
Albany, N. Y.....	1,600	33	4.125	9.28	34	4.25	9.56
Ottawa, Ontario.....	1,704	37	4.343	9.77	39	4.57	10.29

¹ In effect prior to Mar. 1, 1915.

² Based upon estimated average loading of 45,000 pounds.

³ Established on Mar. 1, 1915.

By schedules filed to take effect April 1, 1915, the carriers sought to increase the rates from the entire group of origin, including stations on the Vicksburg, Shreveport & Pacific, the Tremont & Gulf, Crossett and all other stations on the Midland, to eastern destinations, the proposed rates to all the points mentioned in the above table being 35 cents, except to Ottawa, to which a 39-cent rate was proposed. The schedules were suspended, but the proposed rates were found justified in *Lumber Rates to Eastern Cities*, 37 I. C. C., 212. They became effective on January 8, 1916, were in effect when this complaint was filed, and were not attacked. Since that date the rates from Crossett have been the same as from other points in the group, although the rates from the entire group were increased 1 cent, effective June 1, 1918, following *The Fifteen Per Cent Case*, 45 I. C. C., 303.

The complainant also contends that the withdrawal of the group rates from Crossett resulted in undue prejudice to it and undue preference and advantage to its competitors located in the same group from whose mills the rates were not increased, and that on shipments which it made it was damaged to the extent of the difference in rates. Its witness testified that complainant was in active competition with yellow-pine manufacturers located at points in the group, from which lower rates were applied during the period in question; and that on account of this competition it could not sell at prices higher than its competitors were selling in the same markets. It appears that the Tremont Lumber Company, located on the Tremont & Gulf, is the only shipper with the lower rates whose competition was of consequence to complainant, and the record contains only the most general statements as to this competition.

We find that the rates assailed were reasonable. Any undue prejudice which may have existed has now been removed, and there is no sufficient proof of damage to complainant by reason of the alleged discrimination.

An order dismissing the complaint will be entered.

51 I. C. C.

No. 8568.¹

DAVIS SEWING MACHINE COMPANY ET AL.

v.

PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS
RAILWAY COMPANY ET AL.

Submitted August 21, 1916. Decided October 29, 1918.

Claim for reparation on sewing machines, in less than carloads, from Dayton, Ohio, to certain destinations in Louisiana denied for lack of proof that complainant paid and bore the charges. One shipment found to have been overcharged and refund directed. Complaints dismissed.

Orrin L. Will for complainants.

M. P. Callaway for Cincinnati, New Orleans & Texas Pacific Railway Company; Vicksburg, Shreveport & Pacific Railway Company; and Alabama & Vicksburg Railway Company.

M. S. Connelly for Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company, and Chicago, Rock Island & Pacific Railway Company and its receiver.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

The rates charged on five less-than-carload shipments of sewing machines, partly knocked down, from Dayton, Ohio, to Bienville, Ruston, Mansfield, and Coushatta, La., between February 25 and May 1, 1914, inclusive, are assailed herein as unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of the fourth section in that they exceeded the aggregate of the intermediate rates subject to the act. Reparation is asked. Rates are stated in amounts per 100 pounds.

The shipment to Bienville moved over the Pittsburgh, Cincinnati, Chicago & St. Louis Railway to Indianapolis, Ind., Vandalia Railroad to East St. Louis, Ill., St. Louis Southwestern Railway to McNeil, Ark., and thence over the line of the Louisiana Railway & Navigation Company to destination. It weighed 2,680 pounds and charges were collected at a rate of \$1.75. A rate of \$1.69 was legally applicable and the shipment was overcharged \$1.61. This overcharge

¹This report also embraces No. 8568 (Sub-No. 1), Same v. Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company.

should be promptly refunded, with interest, to the party entitled thereto. The two shipments to Ruston moved, one over the above-named route to East St. Louis, thence St. Louis & San Francisco Railroad, not a party defendant, to Howard, Ark., and Chicago, Rock Island & Pacific Railway beyond, and the other over the Pittsburgh, Cincinnati, Chicago & St. Louis to Cincinnati, Ohio, Cincinnati, New Orleans & Texas Pacific Railway to Chattanooga, Tenn., Alabama Great Southern Railroad to Meridian, Miss., Alabama & Vicksburg Railway to Vicksburg, Miss., and Vicksburg, Shreveport & Pacific Railway beyond. They weighed 3,350 pounds each and a rate of \$1.67 was applied. A rate of \$1.69 was applicable and each shipment was undercharged 2 cents per 100 pounds.

The complainants' principal contention is that the rates charged were unreasonable to the extent that they exceeded either the Vicksburg or New Orleans, La., combination.

We are of opinion and find that the rates assailed were unreasonable to the extent to which they exceeded the aggregate of the intermediate rates subject to the act. Since the hearing the rates to the various destinations, except Ruston, have been readjusted so that the through rates do not now exceed the combination on the lower Mississippi River crossings. The complainant seeking reparation was not represented at the hearing by any one having knowledge of whether or not it paid or bore the charges. No steps have been taken to supply this deficiency, although the matter was brought to complainant's attention. No award of damages can be made upon the present record.

An order dismissing the complaints will be entered.

51 I. C. C.

No. 9595.

CHAPIN SACKS MANUFACTURING COMPANY
v.
PERE MARQUETTE RAILROAD COMPANY ET AL.

Submitted July 3, 1917. Decided October 29, 1918.

Reparation awarded on certain carloads of condensed milk, in milk shipping cans, from Webberville, Mich., and Washington, D. C., to Jacksonville, Fla., and from Jacksonville to Richmond, Va.

D. P. Hurley for complainant.

Edward H. Hart for Southern Railway Company; Seaboard Air Line Railway; Richmond, Fredericksburg & Potomac Railroad Company; Cincinnati, New Orleans & Texas Pacific Railway Company; and Washington Southern Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

By DIVISION 3:

Complainant is a corporation engaged in the manufacture of ice cream at Washington, D. C. By complaint filed April 2, 1917, it alleges that the rates charged on five carloads of condensed milk, in cans, two from Webberville, Mich., to Jacksonville, Fla., two from Washington to Jacksonville, and one from Jacksonville to Richmond, Va., delivered between July 7, 1915, and October 23, 1916, were unreasonable. Reparation is asked. Rates are stated in cents per 100 pounds.

The Webberville shipments, which weighed 42,588 and 21,800 pounds, respectively, were made on May 26 and October 2, 1915. The first moved by way of the Pere Marquette Railroad and Cincinnati, Hamilton & Dayton Railway to Cincinnati, Ohio, and Cincinnati, New Orleans & Texas Pacific Railway to Chattanooga, Tenn.; into Lake City, Fla., over the Georgia Southern & Florida Railway and thence over the Seaboard Air Line Railway to destination; but the route from Chattanooga to the junction with the Georgia Southern & Florida could not be given at the hearing. It was suggested that the logical route was by way of the Central of Georgia Railway and Macon, Ga. The second shipment moved by way of the Pere Marquette and Cincinnati, Hamilton & Dayton to Cincinnati; Louisville & Nashville to Montgomery, Ala.; Seaboard Air Line to Cordele, Ga.; Georgia

Southern & Florida to Lake City; and Seaboard Air Line beyond. Charges were collected on the two shipments in the aggregate of \$752.36, at a combination rate of \$1.129, legally applicable, composed of the fourth-class rate of 17.9 cents, minimum 36,000 pounds, governed by exceptions to the official classification, to Cincinnati, and the first-class rate of 95 cents, any quantity, governed by the southern classification, beyond. The Washington shipments, which weighed 44,200 and 45,630 pounds, respectively, moved on February 28 and June 16, 1916, by way of the Washington Southern and Richmond, Fredericksburg & Potomac to Richmond, Va., and the Seaboard Air Line beyond. Charges were collected in the sum of \$709.66, based on a rate of 79 cents. The first-class rate of \$1.06, any quantity, governed by the southern classification, was legally applicable, so that these shipments were undercharged 27 cents per 100 pounds. On the shipment from Jacksonville, which weighed 24,000 pounds and moved August 4, 1916, over the Seaboard Air Line all the way, charges were collected in the sum of \$182.40, at the first-class rate of 76 cents, any quantity, governed by the southern classification. The Central of Georgia, Georgia Southern & Florida, and Louisville & Nashville were not named as defendants.

The cans used are shaped like the ordinary milk shipping can and are made of steel a little over one-eighth inch in thickness, tinned on the interior and exterior surfaces. The jacketed milk shipping can, which is used to a larger extent, consists of tin with a separate jacket of wood or steel, more particularly specified in the classification. At the time these shipments moved the southern classification rated milk, condensed or evaporated, liquid: In milk shipping cans, any quantity, first class; in milk cans completely jacketed, carloads, fifth class, minimum 36,000 pounds. The official classification rated and rates these commodities: In milk shipping cans, subject to rates and regulations of individual carriers; in metal cans completely jacketed, carloads, fourth class, minimum 36,000 pounds; and the western classification: In milk shipping cans, any quantity, first class; in metal cans completely jacketed, carloads, fifth class, minimum 36,000 pounds. Some of the carriers in official and western classification territories, by individual tariffs or exceptions to the classifications, provide for the application of the fourth-class rating on those commodities in milk shipping cans in carloads. When the first of these shipments was made complainant thought its can would come within the description "milk shipping cans, completely jacketed." It was advised by the carriers that such was not the case, and in August, 1916, requested the Southern Classification Committee to establish a carload rating of fifth class, minimum 36,000 pounds, which request was complied with, effective April 15, 1917. The fifth-

class rates were 58 cents from Cincinnati to Jacksonville, 41 cents from Washington to Jacksonville, and 41 cents from Jacksonville to Richmond.

Complainant is satisfied with the present rating and asks only for reparation based upon the fifth-class rates, minimum 36,000 pounds, subsequently made applicable from Washington to Jacksonville and from Jacksonville to Richmond, and a combination rate of 73 cents from Webberville to Jacksonville, made up of the fourth-class rate of 32 cents, governed by exceptions to the official classification, to Washington or the Virginia cities, and the fifth-class rate, governed by the southern classification, of 41 cents, beyond, insisting that the first-class rates were prohibitive. The shipments from Webberville did not move through any point taking the Virginia cities rates, and there is no ground for an award of reparation down to those rates. Defendants take the position that this change in the classification, applicable generally on traffic in and into southern classification territory, should not be made the basis for an award of reparation; and that the first-class rating was not unreasonable in view of the character of the container, the character of the commodity shipped as compared with sterilized condensed milk, and in comparison with the southern classification first-class rating, any quantity, on other commodities in protected containers, such as certain kinds of butter, oleomargarine, liquid cheese coloring, liquid extracts, n. o. i. b. n., gelatine, n. o. i. b. n., glycerine, other than crude, and malt extract, unfermented and not medicated.

The commodity shipped is reduced to some extent by evaporation, but is not sterilized and must be shipped under ice, whereas what is commonly known as condensed or evaporated milk is sterilized, will keep indefinitely, and can safely be shipped in box cars. The shipments in question were transported in refrigerator cars and were iced by complainant, although the rating included icing. Defendants observe that there is a large empty movement for such equipment and that the ratio of dead weight to revenue weight is greater than in the case of box cars. Complainant answers that the empty containers must be returned to the point of origin, thus offsetting in some degree such empty-car movement as there may be. Whether there is, in fact, any appreciable empty-car movement is not definitely shown of record. Under the fifth-class rating the expense of icing must be borne by the shipper. It is to be noted that at the time these shipments moved the southern classification published a carload rating of fifth class on condensed or evaporated milk, packed in various methods, including tin cans, jacketed, while the official and western classifications published a carload rating of fourth class thereon, whether icing was necessary or not. Milk of the kind shipped

is of substantially greater value per pound than ordinary condensed or evaporated milk, but none of the three leading classifications made or makes any distinction based upon value.

Defendants contend that theunjacketed can is more liable to damage in transit than the jacketed can and that therefore a higher rating thereon is justifiable. Such a distinction is apparently recognized in the three leading classifications. While an unprotected tin milk can is obviously more liable to damage than a jacketed can, the record fairly indicates that the can used by complainant is not more liable to damage than the so-called jacketed can. In this connection it is noted that both the southern and western classifications require minimum thickness for wooden jackets of but one-twelfth inch for the side and one-fourth inch for the top and bottom. It was testified for complainant, and not refuted by defendants, that it had never made a claim for loss or damage on shipments in milk shipping cans of the kind in question.

Upon all the facts of record we find that the charges legally applicable were unreasonable to the extent that they exceeded those that would have accrued upon the basis of the fourth-class rate of 17.9 cents per 100 pounds, minimum 36,000 pounds, from Webberville to Cincinnati, and the fifth-class rates of 58 cents per 100 pounds, 41 cents per 100 pounds, and 41 cents per 100 pounds, minimum 36,000 pounds, subsequently made applicable from Cincinnati to Jacksonville, from Washington to Jacksonville, and from Jacksonville to Richmond, respectively; that complainant made the shipments as described and bore the charges thereon; that it was damaged to the extent of the difference between the charges paid and those that would have accrued on the bases herein found reasonable; and that it is entitled to reparation in the sum of \$532.04, with interest. Collection of the undercharges described may be waived. The carriers which participated in the transportation but are not named as defendants may join in the reparation herein awarded.

An order awarding reparation will be entered.

51 I. C. C.

No. 9609.

CHATTANOOGA SEWER PIPE & FIRE BRICK COMPANY
v.
BELT RAILWAY COMPANY OF CHATTANOOGA ET AL.

Submitted September 19, 1918. Decided October 29, 1918.

Demurrage and switching charges collected on certain empty cars placed for loading at Belt station 280, Walker county, Ga., but not used, not shown to have been unreasonable. Complaint dismissed.

B. R. Shepherd for complainant.

D. Lynch Younger for defendant carriers.

R. Walton Moore for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

By DIVISION 3:

The complaint, as amended, alleges that the charges collected by the defendants for demurrage on 10 cars placed in February, 1917, and for demurrage and switching on 11 cars placed in January, 1918, at Belt station 280, Walker county, Ga., for loading, but not used, were unreasonable and prays for reparation.

At the complainant's request the cars were switched by the defendant Belt Railway Company of Chattanooga, hereinafter called the Belt Railway, from its yards in Chattanooga, Tenn., to complainant's clay pits at Belt station 280, a distance of about 5½ miles. In the ordinary course of events the cars would have been loaded with clay and switched by the Belt Railway back to its yards in Chattanooga, where they would have been delivered to the Nashville, Chattanooga & St. Louis Railway and switched to complainant's plant in Chattanooga, a distance of 1½ miles, for manufacture into sewer pipe and other clay products. But at the times these cars were placed the clay in the pits was so frozen that it was impossible to excavate it, a condition that, to complainant's knowledge, had never been encountered prior to February, 1917. After holding them for from three to six days with the expectation that the weather would moderate complainant released the empty cars and they were switched back to Chattanooga by the Belt Railway.

At the time the cars were held the defendants' demurrage tariff provided that when empty cars, placed for loading on orders, were not used, demurrage would be charged from the first 7 a. m. after

51 I. O. O.

placement or tender until released, with no time allowance. At the time the first 10 cars were held the published demurrage charges were \$1 per car for the first day, \$2 for the second, \$3 for the third, and \$5 for each succeeding day, and no charge was made for switching the empties, while at the time the remainder were held the demurrage charges were \$2 per car for each of the first five days and \$5 for each succeeding day, and there was a charge of \$2 per car for switching the empties. The complainant accordingly paid the Belt Railway \$147 for demurrage and \$22 for switching. It contends that these aggregate charges were unreasonable, because and to the extent that they exceeded the demurrage which would have accrued, under either the average agreement or straight demurrage, if the cars had been loaded, plus the charge of the Belt Railway, \$2.50 per car, for switching the loaded cars to the point of interchange with the Nashville, Chattanooga & St. Louis. The complainant operated under the average-demurrage agreement, and for the month of February, 1917, had sufficient credits to cancel such debits as would have been charged against it on the 10 cars held in that month if they had been subject to the average agreement, which they were not, for the reason that no free time was allowed thereon. Consequently, the only charge which would have accrued on the first 10 cars under the average agreement if they had been loaded and switched to the point of interchange with the Nashville, Chattanooga & St. Louis would have been the Belt Railway's switching charge of \$2.50 per car. No evidence was adduced as to complainant's credits in January, 1918. Under straight demurrage there would have been two days' free time and thereafter the same charges as above set forth, and the aggregate charges on the 21 cars if they had been loaded and switched to the point of interchange with the Nashville, Chattanooga & St. Louis would have been \$100.50, made up of \$48 for demurrage and \$52.50 for switching.

The rule relating to demurrage on cars placed for loading but not used has been included in the uniform demurrage code for a number of years. The mere fact that in exceptional instances the demurrage charges thereunder are greater than the charges which would accrue for detention and transportation if the cars were loaded and switched to a destination a short distance beyond the loading point does not prove that the rule or the charges thereunder are unreasonable.

Upon the facts of record we find that it has not been shown that the charges assailed were unreasonable, and an order dismissing the complaint will be entered.

No. 9642.

YEAKEF FUEL COMPANY

v.

OREGON-WASHINGTON RAILROAD & NAVIGATION
COMPANY ET AL.

Submitted November 12, 1917. Decided October 29, 1918.

Charges for switching at Spokane, Wash., carloads of coal and wood from certain interstate points not shown to have been or to be unreasonable or unduly prejudicial. Complaint dismissed.

R. W. Franklin for complainant.

H. A. Scandrett, A. C. Spencer, and Blaine Hallock for Oregon-Washington Railroad & Navigation Company.

J. B. Campbell for Spokane Merchants' Association, intervener.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

The switching charges collected by the defendants at Spokane, Wash., on numerous carloads of coal and wood, shipped from Alger, Wyo., Bear Creek, Mont., and Ramsey, Idaho, between August 14, 1915, and March 12, 1917, and also on shipments moving subsequent to March 31, 1917, the date the complaint was filed, are assailed herein as unreasonable and unduly prejudicial, and reparation prayed. The Spokane Merchants' Association intervened at the hearing in behalf of the complainant.

The shipments moved into Spokane over the Northern Pacific Railway, and were switched by the Oregon-Washington Railroad & Navigation Company, hereinafter called the defendant, from the interchange track near Lee street to complainant's place of business in East Spokane. That part of the city of Spokane east of Lee street is designated East Spokane, and that portion of the city west thereof will be termed Spokane proper. Charges were collected for the switching movement at a rate of \$5 per car, applicable on cars switched to industries in East Spokane. The complainant asserted that the Northern Pacific's tariff authorized the absorption of the switching charges on three carloads shipped from Alger between January 3 and 11, 1917, but the tariff provision respecting absorption of switching charges then in force expressly excepted shipments originating in Wyoming. During the period of movement the de-

defendant maintained a charge of \$3 per car for switching from the Northern Pacific interchange to industries in Spokane proper. Effective May 6, 1917, the charge for switching to industries in East Spokane was reduced to \$3 per car. The complainant stated that it did not consider this charge unreasonable or unduly prejudicial.

It is contended that the former charge of \$5 was excessive for moving a car from Lee street east to complainant's place of business, a distance of about 10 blocks. But it appears that ordinarily all cars are first moved west to defendant's break-up yard and thence distributed, which necessitates a haul of about 4 miles to complainant's place of business, and that it is only in extraordinary and special instances that shipments are switched direct from the interchange point to complainant's yard. For the defendant it was testified that it takes from two to two and one-half hours for the switch engine to make a round trip to and from East Spokane. The defendant submitted a statement showing the cost of operating a switch engine in Spokane to be over \$6 per hour. It cited a large number of points on its line east of Portland, Oreg., at which the minimum switching charge was \$4 per car, and in certain instances the minimum charge is \$5 or more. It was also testified for the defendant that the charge in question was reduced to \$3 to encourage the location of industries on its rails in East Spokane, in competition with the Northern Pacific, which maintains a \$3 switching charge, and that it was regarded as unduly low.

The complainant's main contention appears to be that the former switching charges unduly preferred industries in Spokane proper. There are eight industries on defendant's rails in East Spokane, and the average distance to them from the interchange tracks by way of the break-up yard is substantially greater than to the industries on its rails in Spokane proper. The latter industries are on what is called defendant's old main line, which does not appear to be extensively used by through trains, while in switching to East Spokane it is necessary to pass over defendant's main line, upon which many through freight and passenger trains operate. The complainant also pointed out that the Northern Pacific's charge for switching to industries on its rails in East Spokane was only \$3 per car. It appears that the Northern Pacific is able to switch cars direct from the interchange track to East Spokane without using its main line. The complainant's business is confined to East Spokane, but it competes with dealers in Spokane proper. The cost of hauling coal from Spokane proper to East Spokane by truck or wagon was stated to be about \$15 per car, and wood at least \$10 per car. The complainant's principal competitors in the coal business are not on defendant's rails. The complainant testified that it had competitors dealing in

wood within four or five blocks of its place of business who enjoyed a lower switching charge, but no further particulars were given. The \$5 switching charge was in effect when the complainant located in East Spokane, and the evidence shows that its business has had a steady growth.

The complainant compares the line-haul rates to Spokane plus the switching charge with the rates from and to certain other points, but the through rates are not in issue.

We find that the charges assailed are not shown to have been or to be unreasonable or unduly prejudicial.

An order dismissing the complaint will be entered.

No. 9260.

BEEKMAN LUMBER COMPANY

v.

LOUISIANA RAILWAY & NAVIGATION COMPANY ET AL.

Submitted July 10, 1918. Decided October 29, 1918.

A carload of lumber from Pineville, La., to Suffern, N. Y., reconsigned from Lackawaxen, Pa., found not to have been misrouted. Shipment found to have been overcharged and refund directed. Complaint dismissed.

G. H. Lowry for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

The complainant herein seeks damages due to the alleged misrouting of a carload of lumber shipped September 15, 1915, from Pineville, La., to Suffern, N. Y.

The shipment, weighing 38,000 pounds, was originally consigned to Lackawaxen, Pa., and routed in the bill of lading: "L R & N; L & N; Cinn. % Erie." Apparently at the direction of the shipper, these instructions were changed to read "L R N; V S & P % Erie." The shipment moved over the line of the Louisiana Railway & Navigation Company to Shreveport, La.; Vicksburg, Shreveport & Pacific Railway to Vicksburg, Miss.; Alabama & Vicksburg Railway

to Meridian, Miss.; Alabama Great Southern Railroad and Southern Railway to Potomac Yard, Va.; Pennsylvania Railroad to Croxton, N. J.; and Erie Railroad to Lackawaxen, where it arrived October 15, 1915. Assuming that the car would move through Cincinnati, Ohio, the shipper, on September 27, 1915, directed the agent of the Erie at Kansas City, Mo., to divert it at Cincinnati to Suffern. As the shipment did not move through Cincinnati, the Erie was unable to comply with this order and later notified the shipper that the car had reached Lackawaxen. On October 22, 1915, the shipper directed that the car be reconsigned to Suffern, to which point it was back hauled over the Erie. Charges were collected in the sum of \$160.42. The charges legally applicable were \$159.96, based upon a through rate from Pineville to Suffern of 35 cents per 100 pounds, plus a \$5 charge for reconsignment, \$6 demurrage at Lackawaxen, and 4.2 cents per 100 pounds for the back haul of 79 miles. The shipment was overcharged 46 cents. The 35-cent rate applied by way of Cincinnati as well as through Potomac Yard and movement over either of these routes would have complied with the complainant's routing instructions.

We find that the shipment was not misrouted. The defendants will be expected promptly to refund the above overcharge, with interest.

An order dismissing the complaint will be entered.

51 I. C. C.

No. 9731.

E. I. DU PONT DE NEMOURS POWDER COMPANY

v.

PENNSYLVANIA RAILROAD COMPANY ET AL.

Submitted March 21, 1918. Decided October 29, 1918.

Rate on sulphuric acid, in tank-car loads, from Baltimore, Md., to Gibbstown, N. J., found unreasonable. Reparation awarded.

Harvey S. Farrow for complainant.

Edmund Funck for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

The complainant, a corporation engaged in the manufacture of explosives at Wilmington, Del., by complaint filed May 25, 1917, assails as unreasonable the rate charged by the defendants on nine carloads of sulphuric acid shipped from Baltimore, Md., to Gibbstown, N. J., between June 26 and August 11, 1915, inclusive, and asks for reparation. Rates are stated in cents per 100 pounds.

The shipments, aggregating 910,598 pounds, moved in tank cars over the Philadelphia, Baltimore & Washington Railroad to Grays Ferry, Pa.; Pennsylvania Railroad to Camden, N. J.; and West Jersey & Seashore Railroad beyond, 146 miles. Charges were collected in the sum of \$1,411.43 at the applicable fifth-class rate of 15.5 cents, governed by the official classification. There was contemporaneously in effect over the route of movement a combination rate of 13.7 cents, composed of rates of 9.5 cents to Camden and 4.2 cents beyond. This departure from the provision of the fourth section was protected by an appropriate application. Effective February 15, 1916, the combination of locals was reduced to 10.5 cents, and a joint rate of 9.3 cents was established. It was stated on behalf of the defendants that the latter rate was established to meet the rate published over a competing line. The complainant contends that the rate charged was unreasonable to the extent that it exceeded 10.5 cents. The defendants admit that the rate assailed was unreasonable to the extent claimed and are willing to award reparation on that basis. The rate charged yielded earnings of 2.12 cents per ton-mile, and, based on 101,177 pounds, the average loading of the shipments in issue, \$156.82 per car and \$1.074 per car-mile.

We find that the rate assailed was unreasonable to the extent that it exceeded 10.5 cents per 100 pounds; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$455.30, with interest.

An appropriate order will be entered.

No. 9730.

M. GETZ & COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted May 27, 1918. Decided October 29, 1918.

Charges on a less-than-carload shipment of cake ornaments from New York, N. Y., to San Francisco, Cal., not shown to have been unreasonable, unjustly discriminatory, or unduly prejudicial. Complaint dismissed.

Maurice S. Kramer for complainant.

E. W. Camp and *G. H. Baker* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

By Division 3:

The complainant herein alleges by complaint seasonably filed that the charges collected on two cases of cake ornaments, shipped May 13, 1916, from New York, N. Y., to San Francisco, Cal., were unreasonable, unjustly discriminatory, and unduly prejudicial, and asks for reparation and a reasonable rate. Rates are stated in amounts per 100 pounds.

The articles shipped were a composition of gum tragacanth, sugar, and water, of various designs, embellished with linen flowers and leaves apparently treated with gum paste. They were not and are not specifically rated in the governing western classification, and charges were collected at a rate of \$7.40, the double first-class rate

applicable to "flowers, foliage, or fruit, artificial, in boxes." Complainant's sole contention is that the shipment should have been assessed the first-class rate of \$3.70 applicable under the western classification to "notions, not otherwise indexed by name, in barrels or boxes."

The defendants contend that the word "notions" covers only small, useful, or ingenious articles, and that the classification item was not intended to apply to articles of the kind shipped. As used colloquially, "notions" is defined by the Standard Dictionary to mean "pins, needles, thread, buttons, and other articles for personal use." We are of opinion and find that the shipment did not consist of "notions."

Complainant submitted no evidence in support of its allegations. It admits that these ornaments are very fragile, and to avoid breakage must be carefully packed in shredded tissue paper, covered with paper, and surrounded by excelsior in cardboard boxes about 10 by 6½ by 6½ inches, which when packed weigh about 2 pounds. When shipped these boxes are inclosed in a wooden case, the dimensions of which are not disclosed, but it is evident the cases shipped were light in weight for the space displaced. The ornaments, ranging in value from 50 cents to \$2.25 each, move only in small lots and at infrequent intervals.

We find that the charges assailed are not shown to have been unreasonable, unjustly discriminatory, or unduly prejudicial. The classification should be amended specifically to provide for such shipments.

An order dismissing the complaint will be entered.

No. 7295.

BYRD-MATTHEWS LUMBER COMPANY ET AL

v.

GAINESVILLE & NORTHWESTERN RAILROAD
COMPANY ET AL.

Submitted February 20, 1915. Decided October 29, 1918.

Rates on lumber, in carloads, from Helen, Ga., to points in trunk line and New England territories not shown to have been unreasonable or unduly prejudicial, except that the rates to the Virginia cities were unduly prejudicial. Complainants not shown to have been damaged and reparation denied. Complaint dismissed.

John R. Walker for complainant.

R. Walton Moore, Charles D. Drayton, and Willis H. Fowle for Southern Railway Company; Richmond, Fredericksburg & Potomac Railroad Company; and Washington Southern Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

By DIVISION 3:

The complaint herein, seasonably filed, assails as unreasonable and unduly prejudicial the defendant's rates on lumber, in carloads, from Helen, Ga., to points in trunk line and New England territories, and to the Virginia cities, including export rates to Norfolk, Va., and prays for reasonable rates and reparation on all shipments made within two years prior to the filing of the complaint. Rates are stated in cents per 100 pounds.

Helen is a local point near the terminus of the Gainesville & Northwestern Railroad, on the southern slope of the Blue Ridge mountains, 36 miles north of Gainesville, Ga., where connection is made with the main line of the Southern Railway. It is about 50 miles by wagon road from Murphy, the terminus of the Murphy branch of the Southern, located in the southwestern corner of North Carolina on the northern slope of the Blue Ridge. It is near the southern extremity of the hardwood timber belt which extends through western North Carolina; and the hardwood lumber manufactured there is sold in the eastern markets in competition with that produced at points on the Murphy branch and elsewhere in western North Carolina.

At the time of the hearing the rates on lumber from Helen to the Virginia cities were generally 5 cents higher than the blanket rates

applying to the same destinations from producing points in western North Carolina, including Murphy, which will hereinafter be referred to as typical of the North Carolina group; and the rates to points in trunk line and New England territories were generally 2.5 cents higher than from Murphy. To Norfolk for export, the rate from Helen was 1.5 cents over Murphy, but the Murphy rate included ship side delivery, for which a charge of 1.5 cents was made on shipments from Helen, thus making the spread equivalent to 3 cents. Some of the rates were slightly reduced subsequent to the hearing. The complainants ask for the establishment of rates from Helen not higher than those applicable from Murphy on lumber other than hemlock and spruce.

The following table shows the rates in effect prior to June 1, 1918, on common lumber in carloads from Helen, Gainesville, and Murphy to representative destinations, together with distances and ton-mile earnings:

To—	From Helen.			From Gainesville.			From Murphy.		
	Miles.	Rate.	Ton-mile earnings.	Miles.	Rate.	Ton-mile earnings.	Miles.	Rate.	Ton-mile earnings.
		<i>Cents.</i>	<i>Mills.</i>		<i>Cents.</i>	<i>Mills.</i>		<i>Cents.</i>	<i>Mills.</i>
Norfolk, Va	598	¹ 21	7.02	562	20	7.12	570	16	5.61
Do		² 17.5	5.85				570	³ 16	5.61
Lynchburg, Va.....	457	21	9.19	421	20	9.50	429	16	7.46
Harrisburg, Pa.....	755	25	6.62	719	25	6.95	727	24.5	6.74
New York, N. Y.....	858	29	6.76	822	28	6.81	830	26.5	6.39
Springfield, Mass.....	907	35	7.02	961	35	7.28	969	32.5	6.71

¹ Local.

² Export.

³ Includes ship side delivery.

Effective June 1, 1918, following our supplemental order of March 12, 1918, in *The Fifteen Per Cent Case*, 45 I. C. C., 303, the rates shown to points other than those in Virginia were increased 1 cent. By order of the Director General of Railroads, effective June 25, 1918, all of the rates herein mentioned were increased approximately 25 per cent. This last increase did not change the existing spread of 2.5 cents between the rates from Helen and Murphy to points in the trunk line and New England territories, but it increased the spread between the rates from those points to the Virginia cities from 5 cents to 6 cents.

The 16-cent rate to Norfolk from Murphy, Andrews, Bushnell, Fontana, Waynesville, and Canton, N. C., on the Murphy branch, yields average ton-mile earnings of 6.15 mills for the average distance of 520 miles. The average ton-mile earnings of the Southern on lumber in the year 1913 were 6.41 mills. In that year the Southern proposed to revise its rates on lumber from western North Carolina to

the destinations in question, and expressed to complainants its willingness to give Helen rates 1 cent over western North Carolina if the proposed revision should be approved by us. It was disapproved in *Lumber Rates—Southern Railway Points to Eastern Points*, 31 I. C. C., 244. From points on the Murphy branch there is a one-line haul over the Southern to the Virginia cities. Operating conditions on the Murphy branch are somewhat less favorable than on the Gainesville & Northwestern.

The complainants compared the rates from Helen with rates from Memphis, Nashville, and Chattanooga, Tenn., and points in the hardwood sections of Louisiana and Mississippi to various destinations, which in many instances are lower than from Helen, but the conditions affecting those rates are substantially different. The defendants cited rates to the Virginia and eastern cities from points in Georgia and North Carolina on the Louisville & Nashville Railroad, and on the Smoky Mountain Railway connecting with the Southern at Ritter, N. C., which compare favorably with the rates from Helen to the same destinations.

In *Byrd-Matthews Lumber Co. v. G. & N. W. R. R. Co.*, 40 I. C. C., 116, we found that the rates on hardwood lumber from Helen to Cincinnati, Ohio, were unduly prejudicial to complainants and unduly preferential of its North Carolina competitors to the extent that they exceeded the rates from Murphy by more than 3 cents. The short-line distances from Helen and Murphy to Cincinnati, in connection with the Southern, are 563 and 533 miles, respectively.

The complainants showed that they had been operating at a substantial loss, but it was conceded that this was not due entirely to the rate adjustment. Although Helen is at a natural disadvantage in competing with western North Carolina mills in the eastern markets because of its location, the relationship between the rates assailed from Helen and those from western North Carolina to the Virginia cities can not receive our sanction.

We find that the rates assailed are not shown to have been unreasonable or unduly prejudicial, except that the rates on lumber other than hemlock and spruce from Helen to the Virginia cities were unduly prejudicial to the extent that they exceeded by more than 3 cents per 100 pounds the rates from Murphy and other points in North Carolina taking the same rates. There was no proof of damage to complainants by reason of the undue prejudice found to exist, and reparation will be denied. The rates assailed have been replaced by rates initiated by the Director General which are not covered by the complaint. He has not been made a party to this proceeding. We therefore make no order for the future.

An order dismissing the complaint will be entered.

No. 9949.

HENRY G. BRABSTON

v.

CENTRAL OF GEORGIA RAILWAY COMPANY ET AL

Submitted March 4, 1918. Decided October 29, 1918.

Charges on a carload of lumber from Alexander City, Ala., to Roanoke, Va., reshipped to Greencastle, Pa., found to have been illegal. Reparation awarded.

A. J. Ribe and *Brenton K. Fisk* for complainant.

E. C. Blanchard for Central of Georgia Railway Company, Southern Railway Company, and Norfolk & Western Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

The complainant is engaged in the wholesale lumber business at Birmingham, Ala., under the name of Henry G. Brabston & Company. By complaint filed November 3, 1917, he alleges that the transportation, demurrage, unloading, storage, and reloading charges collected on a carload of yellow-pine lumber shipped July 30, 1917, from Alexander City, Ala., to Roanoke, Va., reshipped to Greencastle, Pa., were unreasonable to the extent that they exceeded the charges that would have accrued at the joint rate of 24 cents per 100 pounds, and asks for reparation. Rates are stated in cents per 100 pounds.

July 30, 1917, the complainant forwarded the shipment to Roanoke, consigned to himself, with the intention of reconsigning to his vendee at Greencastle. He had previously attempted to bill the lumber through to Greencastle, but the agent of the initial carrier refused to sign a through bill of lading because of an embargo by the Norfolk & Western Railway against all freight from connecting lines destined northbound by way of Hagerstown, Md., and the Cumberland Valley Railroad. Greencastle is a local station on the Cumberland Valley, and Hagerstown is the junction between that road and the Norfolk & Western. The bill of lading under which the shipment was forwarded from point of origin in no way indicated that Roanoke was not the final destination. The car moved over the Central of Georgia and the Southern railways and Nor-

folk & Western to Roanoke, where it arrived August 13, 1917. On August 3, 1917, while the shipment was in transit the complainant requested the Norfolk & Western to reconsign it to the vendee at Greencastle, but the carrier declined to do so because of another existing embargo, effective midnight July 26, 1917, declared by it against "all shipments of lumber, carload or less carload, from all points, consigned to any point on or via its lines, when intended for diversion or reconsignment to points on or routing via its Shenandoah division, extending from Winston-Salem, N. C., to Roanoke, Va., and Roanoke, Va., to Hagerstown, Md., inclusive," and which also provided that shipments of lumber billed from point of origin after July 26, 1917, would not be reconsigned when movement by the Shenandoah division was required. The record indicates that the complainant had no personal knowledge of this latter embargo at the time the shipment was forwarded from point of origin. On August 25, 1917, the Norfolk & Western had the lumber unloaded by and stored with an independent storage company. The negotiations between the complainant and the Norfolk & Western looking to the forwarding of the car to Greencastle terminated in the advice of that carrier, apparently on August 24, 1917, that it would be necessary for the complainant to pay the charges to Roanoke and reship the lumber. Charges of \$156.52 were accordingly paid, made up of transportation charges in the sum of \$91.52, based on a weight of 41,600 pounds and the local rate of 22 cents to Roanoke, demurrage in the sum of \$30, \$15 for unloading, \$5 for two weeks' storage, and \$15 for reloading. August 31, 1917, the lumber was forwarded under a new bill of lading showing complainant's vendee as the consignee and Greencastle as the destination. The unloading and reloading at Roanoke were performed by the storage company at the direction of the Norfolk & Western and the complainant had nothing to do with the physical handling of the shipment at that point. There was no embargo against local shipments from Roanoke. For the transportation from Roanoke to Greencastle complainant paid charges in the sum of \$62.03, based upon the local rate of 14.7 cents and a weight of 42,200 pounds. This weight is 600 pounds greater than the weight used in assessing charges to Roanoke, but the parties could not state how either weight was arrived at, and the complainant does not dispute their correctness.

At the time of movement there was in effect a joint rate of 24 cents from Alexander City to Greencastle, and the Norfolk & Western's reconsignment tariff governing the shipment provided for reconsignment at Roanoke on the basis of the through rate without additional charge where the reconsignment instructions were received prior to the arrival of the car at first destination. The tariff

contained no inhibition against the reconsignment of lumber to an embargoed point.

The circumstances under which the shipment was handled at and reshipped from Roanoke did not change its essential character, as a through shipment reconsigned at Roanoke, and the joint rate of 24 cents was legally applicable. *Nichols & Cox Lumber Co. v. N. Y. C. R. R. Co.*, 51 I. C. C., 174. The demurrage and other charges in connection with the detention of the shipment at Roanoke accrued as the result of the disability of the defendants, consistent with the embargo declared by the Norfolk & Western, to perform the reconsignment service which, under their tariffs, they held themselves out to perform when the shipment was accepted at point of origin for transportation to Roanoke. As we observed in the *Reconsignment Case*, 47 I. C. C., 590, 634, carriers may provide in their tariffs that they will not consign to an embargoed point, in which event the responsibility for detention at a reconsigning point of a shipment ordered reconsigned to an embargoed point rests upon the shipper, who, under the published tariffs, assumes the responsibility of such detention when the shipment leaves point of origin.

We find that the transportation charges collected were illegal to the extent that they exceeded the charges that would have accrued at the joint rate of 24 cents per 100 pounds and a weight of 42,200 pounds, and that the demurrage, unloading, storage, and reloading charges were illegally assessed. We further find that the complainant made the shipment as described and paid and bore the charges thereon; that he has been damaged to the extent that the charges paid exceeded those herein found legally applicable; and that he is entitled to reparation in the sum of \$117.27, with interest.

An order awarding reparation will be entered.

51 I. C. C.

No. 9860.
PADUCAH BOARD OF TRADE ET AL.
v.
ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted February 26, 1918. Decided October 29, 1918.

Rate on cotton mop heads, in less than carloads, from Paducah, Ky., to Chicago, Ill., found unreasonable. Reparation awarded.

C. W. Craig and *F. B. Toof* for complainants.

A. P. Humburg for Illinois Central Railroad Company.

M. K. Bush and *Kenneth F. Burgess* for Chicago, Burlington & Quincy Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainants, the Paducah Board of Trade, a corporation organized for the purpose of promoting the interests of manufacturers and shippers of Paducah, Ky., and the Cohankus Manufacturing Company, a corporation engaged in the manufacture of cotton cordage at Paducah, allege, by complaint filed September 7, 1917, that the first-class rate of 48.6 cents per 100 pounds charged by defendants on cotton mop heads in bales, in less than carloads, from Paducah to Chicago, Ill., was unreasonable to the extent that it exceeded 27 cents. They seek reparation on shipments moving since November 1, 1916, and the establishment of a reasonable rate. Rates are stated in cents per 100 pounds.

Cotton mop heads, manufactured from the refuse of cotton spinning mills, consist of a number of loosely twisted strands of cotton, about 2 feet long, which are bound together by a piece of linen tape stitched across the center of the strands. They are shipped in machine-pressed bales burlapped, 72 or 144 mop heads to the bale, and weigh from 144 to 288 pounds per bale, a standard bale weighing about 180 pounds. The dimensions of such a bale are about 24 by 20 by 40 inches, its volume approximately 11 cubic feet and its value about \$54. Mop heads are not liable to damage in transit.

There appears to have been no movement of this commodity prior to 1912. Thereafter less-than-carload ratings of second class were

established in the official classification, first class in the western classification, and fourth class in the southern classification. Subsequently the rating in the western classification was reduced to second class. The Illinois classification provided a rating of third class on mop heads in kegs or barrels, in less than carloads, which, in the absence of any other specific provisions, makes the rating first class on this commodity in bales, under the classification rule that commodities shipped in bales shall be rated two classes higher than when shipped in boxes or barrels.

In *Paducah Board of Trade v. C., B. & Q. R. R. Co.*, 37 I. C. C., 743, the carriers were required to establish combination class and commodity rates from Illinois points, including Chicago, to western Tennessee based on Paducah which should not exceed the rates constructed by combination on Cairo, Ill. The Cairo rates were governed by the Illinois classification, while the Paducah rates were governed by the southern classification. In complying with the order in that case the carriers made the rates to and from Paducah subject to the Illinois classification. This resulted in a change from fourth class to first class in the rating on cotton mop heads in bales, in less than carloads, and a consequent increase in the rate from Paducah to Chicago from 27 to 48.6 cents, effective November 1, 1916. The burden of justifying this increased rate is upon the defendants.

On behalf of the complainant it was urged that the rate on mop heads should not exceed that on cotton rope, which is rated fourth class in the Illinois classification. Cotton rope is made from a grade of raw material higher than that for mop heads and is subjected to a further process of manufacture. Its value is from 38 to 43 cents per pound, and it is shipped in 35-pound packages, burlapped, about 14 inches in diameter and 16 inches long, and occupies about 2 cubic feet. Five of these packages, weighing 175 pounds and occupying 10 cubic feet, are worth about \$66.50. The volume of movement is about double that of mop heads.

Comparison is also made between mop heads and mop yarn, which is the same material in a skein baled for shipment, and takes a rating of third class in bales or boxes in the Illinois classification. Under the Illinois classification, if mop heads, taking the first-class rating, are attached to mop handles, rated third class, the complete mops are rated second class. It was also asserted that the only mop heads shipped in kegs or barrels or boxes, to which the third-class rating in the Illinois classification might apply, are the expensive kind having a metal frame, which are usually packed in tin cartons. The first-class rate and the rate applicable on cotton mop heads in bales to Chicago were compared with the rates to Cincinnati, Ohio, Louisville, Ky., Memphis, Tenn., St. Louis, Mo., and New Orleans, La.,

but the defendants questioned the value of this comparison on the ground that the rates cited were all depressed by water competition.

For the defendants it was admitted that the first-class rate applicable under the Illinois classification to cotton mop heads in bales is improper, and on January 20, 1918, a rating of second class was established. The second-class rate from Paducah to Chicago was 40.4 cents. It was vigorously contended, however, that the rate of 48.6 cents from Paducah to Chicago was not unreasonable as applied to the movement of cotton mop heads in bales in less-than-carload quantities. In support of this contention the defendants submitted by way of comparison various rates with which the rate assailed did not compare unfavorably. Most of these rates appear to be class rates governed by the Illinois classification, and the others apply in western and central freight association territories. The defendants were unable to show that there was any movement under the rates cited, and complainants asserted that they were mere paper rates so far as cotton mop heads are concerned.

The defendants stated that the rates in Illinois classification territory are upon the lowest basis in the United States, and that it is their purpose to attempt to apply the so-called new c. f. a. scale to Illinois classification territory. Under this scale the second-class rate for 389 miles, the short-line distance from Paducah to Chicago, is 48 cents. Effective May 25, 1918, a new scale of class rates, governed by the official classification, was established from Paducah to Chicago, under which the second-class rate is 50 cents. Complainants ask for a rate not in excess of 27 cents from Paducah to Chicago, to be published either as a commodity or a class rate. It is not shown that any mop heads move in less than carloads at commodity rates and it appears that commodity rates are seldom provided on any commodity in less-than-carload quantities. This record affords no basis for requiring the establishment of a commodity rate from and to the points in question.

We find that the rate assailed was unreasonable to the extent that it exceeded the second-class rate contemporaneously in effect from and to the points named. We further find that complainant the Cohankus Manufacturing Company made shipments from Paducah to Chicago subsequent to November 1, 1916, as alleged, and paid and bore the charges thereon; that it was damaged to the extent that the rates charged exceeded the rate herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record, and complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the date on which the charges were paid, which statement should be

submitted to the defendants for verification. Upon receipt of a statement so prepared and verified, we will consider the entry of an order awarding reparation. As to the future we make no finding and enter no order for the reason that the Director General of Railroads in exercise of powers conferred upon the President by the federal control act has initiated a rate which exceeds the rate complained of. The increased rate is not in issue and the Director General has not been made a party defendant. In the present state of the pleadings the rate so increased is not subject to review in this proceeding.

No. 9994.

CENTRAL PENNSYLVANIA LUMBER COMPANY

- v. -

TIONESTA VALLEY RAILWAY COMPANY ET AL.

Submitted May 23, 1918. Decided October 29, 1918.

Demurrage charges at Belvidere, N. J., on a car of lumber from West Sheffield, Pa., not shown to have been unreasonable or otherwise in violation of the act. Complaint dismissed.

E. L. Woolever and J. F. Sisley for complainant.

Henry Wolf Biklé and Seth T. McCormick, jr., for Pennsylvania Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

This complaint, seasonably filed, assails as unreasonable certain demurrage charges assessed for the detention at Belvidere, N. J., of a carload of lumber and lath, shipped April 27, 1916, from West Sheffield, Pa., to Belvidere, and later forwarded to Netcong, N. J. Reparation is asked.

The shipment was originally consigned by complainant to its order, "notify S. W. Gardner & Co.," at Belvidere. It arrived at Belvidere over the Pennsylvania Railroad, hereinafter termed the defendant, was placed on the defendant's team track for delivery, and notice of arrival was given to S. W. Gardner & Company on May 8, 1916. The consignees failed to surrender the bill of

lading and accept the shipment, but thereafter from time to time assured the defendant's agent that they would later accept it and pay the charges. On June 17, 1916, the defendant's agent at Belvidere notified the defendant's division freight agent and the agent of the initial carrier at West Sheffield, the originating point, that the shipment remained on hand undelivered. On June 21, 1916, the division freight agent advised the consignees that unless disposition orders were received on or before July 1, 1916, the lumber would be unloaded and stored. On June 22, 1916, the initial carrier's agent notified complainant that the shipment was being held for consignees. On June 27, 1916, the complainant notified the agent at Belvidere not to deliver the shipment to Gardner & Company, but to forward it to Netcong. Before complying with this request, the defendant insisted that complainant surrender the original bill of lading or execute an indemnity bond. Owing to delay in obtaining the original bill of lading from the bank, complainant did not surrender it until July 1, 1916, on which date the car was released and thereafter forwarded to Netcong.

Charges in the sum of \$73 were originally collected for detention at Belvidere, but apparently a refund of \$3 was subsequently made. It is admitted by both parties that \$70 represents the correct amount of demurrage charges applicable under the defendant's tariffs if the detention be computed from the date of the notice of arrival to the consignees. The complainant admits that it was responsible for the detention of the car after June 22, 1916, but contends that no demurrage should have been assessed against it under the circumstances of this case for the detention prior to June 22, 1916, on the ground that the defendant's agent was negligent in allowing the car to remain on hand without notice to the consignor. We are of opinion that the defendant's failure to give such notice did not constitute a breach of duty under the act. *Germain Co. v. P., B. & W. R. R. Co.*, 18 I. C. C., 96; *Famechon Co. v. C., B. & Q. R. R. Co.*, 45 I. C. C., 598.

We find that the charges assailed are not shown to have been unreasonable or otherwise violative of the act. An order dismissing the complaint will be entered.

No. 9666.

ADVANCE BAG COMPANY

v.

CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS
RAILWAY COMPANY ET AL.

Submitted August 24, 1917. Decided October 29, 1918.

Rate on paper bags, in less than carloads, from Middletown, Ohio, to Franklin, La., found to have been unreasonable. Reparation awarded.

L. W. Perkins and *Lawrence F. Deininger* for complainant.

R. D. Hunter for Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

The complainant, a corporation engaged in the manufacture of paper bags at Middletown, Ohio, alleges, by complaint seasonably filed, that the rate charged on 25 packages of paper bags shipped October 18, 1915, from Middletown to Franklin, La., was unreasonable and in violation of section 4 of the act in that it exceeded the aggregate of the intermediate rates. Reparation is asked. Rates are stated in amounts per 100 pounds.

The shipment, weighing 1,595 pounds, moved over the Cleveland, Cincinnati, Chicago & St. Louis Railway to St. Louis, Mo.; St. Louis, Iron Mountain & Southern Railway to Alexandria, La.; and over the line of Morgan's Louisiana & Texas Railroad & Steamship Company to destination. Charges were collected in the sum of \$23.02. A joint third-class rate of \$1.154, governed by the western classification, applied. The shipment was overcharged \$4.61.

Franklin is 101 miles west of New Orleans and intermediate that point and Middletown by the route of movement. A fifth-class rate of 44 cents, governed by the southern classification, contemporaneously applied over this route from Middletown to New Orleans. This departure from the long-and-short-haul rule of the fourth section of the act was protected by an appropriate fourth section application, which was not heard with this case.

A third-class rate of 30 cents, governed by the western classification, contemporaneously applied from New Orleans to Franklin. This rate, in connection with the 44-cent rate to New Orleans, re-

sulted in a combination rate of 74 cents, and in the absence of a specific through rate the combination would have applied under rule 5 (b) of Tariff Circular 18-A. The combination was lower than the joint rate, but the latter does not appear to have exceeded the aggregate of any intermediate rates subject to the act. The 30-cent component was published as a proportional rate, to be used only as a basis in making through rates on interstate traffic originating at or destined to points in various named states, including Ohio, from or to which no through rates were in effect. The restriction was not only in general terms, that is, without reference to any particular tariff or tariffs, but would not limit the applicability of the proportional as a component in constructing a through rate to Franklin in the absence of the joint rate, and the latter was *prima facie* unreasonable to the extent that it exceeded the aggregate rates to and from New Orleans. *Williams Co. v. Pennsylvania Co.*, 50 I. C. C., 531, and cases therein cited. The defendants offered no evidence to rebut the presumption of unreasonableness.

We find that the rate assailed was unreasonable to the extent that it exceeded 74 cents per 100 pounds. The complainant is not shown in the shipping papers as consignor or consignee, but the record establishes that it sold the bags to the National Paper Company, the consignor, under contract to deliver to its vendee f. o. b. Franklin, and is the real party in interest. *Oden & Elliott v. S. A. L. Ry.*, 37 I. C. C., 345. We further find that the complainant paid and bore freight charges in the sum of \$18.45, and was damaged and is entitled to reparation in the sum of \$6.65, the difference between the charges paid by it and those that would have accrued at the rate found reasonable, with interest. Of the above-mentioned overcharge \$4.57 was paid at destination and the record does not disclose who bore it. The defendants will be expected promptly to refund the amount, with interest, to the party entitled thereto. Since this case was submitted the rate assailed has been increased under General Order No. 28 of the Director General, who has not been made a party defendant. No finding or order for the future can be made.

An order awarding reparation will be entered.

51 I. C. C.

No. 9956.

TOBERMAN, MACKEY & COMPANY

v.

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY
ET AL.

Submitted March 29, 1918. Decided October 29, 1918.

Allegation that charges on baled hay, in carloads, from certain points in Illinois to certain points in Massachusetts, New York, Pennsylvania, and Virginia were assessed on excessive weights not sustained. Complaint dismissed.

James W. Dye for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

It is alleged herein, by complaint seasonably filed, that the charges collected by the defendants on 19 carloads of baled hay, shipped from St. James, St. Peter, Loogootee, Brubaker, Henton, and Dollville, Ill., to New York and Van Nest, N. Y.; Boston and Chelsea, Mass.; Kingston, Glenolden, Jenkintown, and North Philadelphia, Pa.; and Lynchburg, Va., between August 30, 1915, and April 21, 1916, were unreasonable and unjustly discriminatory in that they exceeded the charges that would have accrued based on weights obtained at destinations. Reparation is asked.

With possibly one exception, the weights upon which the charges were assessed were obtained by weighing the shipments on track scales of the originating carrier, the Chicago & Eastern Illinois Railroad Company, at or near the points of origin. It is not shown of record whether the excepted shipment was weighed by the defendants, and the complainant's evidence as to its actual weight is conflicting. This shipment will not be further considered. No complaint is made against the rate charged. The complainant contends that the outturn weights of the shipments at destinations were less than the weights upon which the charges were assessed.

The defendants' tariff provided, in part, as follows:

Corrections in freight charges will not be accepted by carriers, nor will claims be participated in which may be based upon outturn weight at destination, except where the hay and straw is weighed at a transfer point at which a hay warehouse is located, or at destination, under the supervision of a representative of carriers or an official weighmaster of a board of trade, chamber of commerce, or inspection bureau.

Substantially the only evidence introduced by complainant in support of its contention consists of exhibits relating to individual shipments and embracing statements of weights upon which settlement was made with the purchasers of the hay; statements of "sworn weighers"; statements signed by weighers of the New York Hay Exchange Association; and one unsigned hay delivery tally sheet of a delivering carrier at New York. Correspondence with various hay merchants at several eastern markets was submitted to show that it was the practice of carriers to make corrections in freight charges to basis of outturn weight. This correspondence is general in character and does not show that the carriers, in making adjustments to the basis of the outturned weights at destination, fail to comply with the express terms of the governing tariffs. No one appeared at the hearing who could testify of his own knowledge as to the weights of the shipments or who was present when any of them were weighed; nor was evidence introduced concerning the accuracy of the scales used in determining the weights relied upon by the complainant or to show that the scales were properly tested and kept in good order by competent inspectors. The carriers were not represented at the hearing. The correspondence of record shows, however, that reweighing at destinations was not done under the supervision of the carriers or the other agencies, specifically named in the governing tariff, and for that reason correction of the scale weights ascertained at or near the points of origin could not lawfully be made to the basis of the outturn weights at destinations.

We find that the evidence introduced by the complainant is insufficient, and an order dismissing the complaint will be entered.

51 I. C. C.

No. 10008.

STEVENS-EATON COMPANY

v.

TALLULAH FALLS RAILWAY COMPANY ET AL.

Submitted February 26, 1918. Decided October 29, 1918.

Following *American Window Glass Co. v. S. Ry. Co.*, 48 I. C. C., 451; *Held*, That defendants should have permitted the diversion at Potomac Yard, Va., to Bayonne, N. J., of a carload of rough lumber from Prentiss, N. C., to New York, N. Y., on basis of the through rate from Prentiss to Bayonne, plus a maximum charge of \$5 for the extra services incident to the diversion. Reparation awarded.

W. S. Phippen for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

This complaint, seasonably filed by the National Wholesale Lumber Dealers' Association, of New York, N. Y., on behalf of the Stevens-Eaton Company, a corporation engaged in the sale of lumber at New York, hereinafter called the complainant, alleges that the charges collected by defendants on a carload of rough lumber shipped November 26, 1915, from Prentiss, N. C., to New York, diverted in transit to Bayonne, N. J., were unreasonable to the extent that they exceeded the charges that would have accrued on the basis of the joint rate from Prentiss to Bayonne, plus a reasonable diversion charge. Reparation is asked. Rates are stated in cents per 100 pounds except as otherwise noted.

The shipment, weighing 53,500 pounds, moved over the Tallulah Falls Railway to Cornelia, Ga.; Southern Railway to Potomac Yard, Va.; Baltimore & Ohio Railroad to East Side, Pa.; Philadelphia & Reading Railway to Bound Brook, N. J.; and Central Railroad of New Jersey beyond. The change in destination from New York to Bayonne was effected by the Southern at Potomac Yard. The contents of the car remained unchanged and no out-of-line haul was necessary. Charges were collected in the sum of \$204.37 at a combination rate of 38.2 cents, composed of rates of 23.5 cents to Potomac Yard and \$2.94 per net ton, equivalent to 14.7 cents per 100 pounds, 51 I. C. C.

beyond. At the time of movement a joint through rate of 30.5 cents was in effect over the route of movement. This rate was inapplicable as the tariffs of the Southern did not, except under certain conditions not here material, permit diversion or reconsignment at the joint through rate. On December 27, 1915, the Southern amended its tariffs so as to permit diversion or reconsignment of shipment at the through rate from point of origin to final destination, plus a charge of \$5 for the extra services incident to the reconsignment.

Upon the record, and following *American Window Glass Co. v. S. Ry. Co.*, 48 I. C. C., 451, and cases therein cited, we find that the defendants should have provided for the diversion of the shipment on the basis of the joint through rate of 30.5 cents per 100 pounds contemporaneously in effect from Prentiss to Bayonne, plus a reasonable charge for extra services performed incident to the diversion; also that \$5 would have been a reasonable maximum charge for the extra services performed. We further find that the Stevens-Eaton Company made the shipment as described and paid and bore the charges thereon; that such charges were unreasonable, and that the Stevens-Eaton Company was damaged to the extent of the difference between the charges paid and those that would have accrued on the basis of the rate and extra charge herein found reasonable and is entitled to reparation in the sum of \$36.19, with interest.

An order awarding reparation will be entered.

51 L. C. C.

No. 10015.
JOHN SCHROEDER LUMBER COMPANY
v.
NEW YORK CENTRAL RAILROAD COMPANY.

Submitted February 23, 1918. Decided October 29, 1918.

Demurrage charges at South Bend, Ind., on a carload of baled shavings from Odanah, Wis., found to have been properly assessed and not shown to have been unreasonable. Complaint dismissed.

Lawrence J. Koerble for complainant.

D. P. Connell for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

This complaint, seasonably filed, assails as unreasonable the demurrage charges collected at South Bend, Ind., on a carload of baled shavings, shipped June 30, 1916, from Odanah, Wis., and prays for reparation.

The shipment was delivered to the Chicago & North Western Railway at Odanah, consigned by J. S. Stearns Lumber Company to "Jno. Schroeder Lbr. Co., So. Bend, Ind.," and routed "N. Y. C." It moved over the lines of the initial carrier, the Indiana Harbor Belt Railroad, and the defendant. On July 13, 1916, the complainant attempted by letter to reconsign the shipment to the Northern Indiana Gas & Electric Company at South Bend. The letter was directed to the agent of the Michigan Central Railroad at South Bend, the complainant being under the impression that the shipment had been routed by way of that road. The car reached South Bend on July 6, 1916, over defendant's line, was placed on a team track, and notice of arrival mailed to complainant, the consignee designated in the billing, at 9 a. m. July 7, 1916. Having no office in South Bend, complainant did not receive the notice and as the shipment was not called for it was reported unclaimed. It was testified for defendant that in addition to mailing the notice defendant's agent at South Bend telephoned the agents of the other lines at that point to ascertain whether they had disposition orders for this shipment. On August 9, 1916, disposition orders were received and the car was tendered to the Northern Indiana Gas & Electric Company, but was

not released until August 15, 1916. Demurrage charges amounting to \$32 were collected and if a charge was legally applicable for the entire detention at South Bend it is not questioned that this is the proper amount. The complainant concedes that demurrage was properly assessed up to the date of the receipt by the Michigan Central's agent of its letter of July 13, but contends that after that time demurrage was improperly assessed because had the defendant's agent been duly diligent he would, in accordance with a general custom at South Bend, have inquired of the other railroad agents, including the Michigan Central's, and received the disposition orders. The record does not establish any disregard by the defendant of its legal obligations in connection with this shipment.

We find that the demurrage charges assailed were properly assessed and that they are not shown to have been unreasonable.

An order dismissing the complaint will be entered.

51 I. C. C.

No. 10025.

MORGAN COUNTY SAND PRODUCERS' ASSOCIATION
v.
BALTIMORE & OHIO RAILROAD COMPANY.

Submitted June 5, 1918. Decided October 29, 1918.

Discontinuance of allowances to shippers for inside-door protection for shipments of glass sand in bulk, in carloads, found not unreasonable or unduly prejudicial. Complaint dismissed.

John F. Lent for complainant.

William Ainsworth Parker for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

The failure of the defendant to furnish inside-door protection, commonly called grain doors, for shipments of glass sand in bulk, in carloads, from Berkeley Springs, W. Va., to various destinations is assailed herein as unreasonable and unduly prejudicial, and we are asked to require the defendant to furnish grain doors on future shipments and to award reparation to complainant's members, hereinafter termed the complainants, on shipments made subsequent to January 1, 1916.

Berkeley Springs is a local point on the defendant's line, about 60 miles east of Cumberland, Md. The complainants ship from their plants at or near Berkeley Springs principally to points east as far as Waterbury, Conn., north as far as Niagara Falls, N. Y., west as far as Columbus, Ohio, and to Huntington, W. Va. The official classification, which governs, provided and provides that temporary doors, when required to make secure or to protect carload shipments of all freight in bulk, including sand, must be furnished by and at the expense of the shipper. On February 15, 1915, the defendant canceled in part its exception to the classification, under which, for many years, it had provided inside car doors for all freight in bulk, or an allowance of 50 cents per door and not exceeding \$2 per car, when furnished by the shipper, leaving the exception applicable to grain and flaxseed only. Similar action was taken by other carriers in trunk line territory.

The Berkeley district sand, which is used in the manufacture of glass, china, etc., must be kept dry and clean, and is shipped in box
51 I. C. C.

cars, usually in bulk and occasionally in bags. To prevent sand in bulk from sifting out of the car shippers line the doors, floors, and sides of wooden box cars with paper, for which expense no allowance is asked, and nail boards across the insides of the doorways. Prior to the cancellation of the allowance the defendant either furnished ordinary grain doors, which were not satisfactory to complainants, or distributed a carload of lumber among the complainants, who supplied the labor for the doors without charge; and when the carrier failed to furnish the lumber the complainants supplied it at the defendant's expense. Complainants were unable to show the actual costs to them of furnishing the doors, but its witnesses testified that the average cost per car ranged from \$1 to \$2. The complainants' original claim for reparation, based on \$2 per car, was modified at the hearing to the basis of the former allowance of \$1 per car for two doors.

The defendant concurs, but not as an initial carrier, in agent Morris's tariff of exceptions to the classification, which provides that the carriers in central freight association territory will furnish the doors for all bulk freight. Those carriers are planning to follow the action taken by the eastern lines. The complainants are in competition with producers of glass sand at points in central freight association territory. The defendant by withdrawal of its limited concurrence in the agency tariff of the central freight association lines could not by that action remove the alleged discrimination.

The complainants contend that the rates on sand contemplate the expense to the carriers for grain doors. The former tariff provision applied not only to sand but also to all other bulk freight. The complainants occasionally ship sand in bags and in open cars, and no difference is made in the rates dependent on the character of the equipment used.

The contentions of the parties are similar to those discussed in *Sterling Salt Co. v. P. R. R. Co.*, 43 I. C. C., 276, in which we found that the discontinuance of allowances to shippers for inside door protection for shipments of bulk salt in carloads and the failure of the carriers to provide such doors was not unreasonable or unduly prejudicial.

Following the case cited and upon this record we find that the practice assailed is not unreasonable or unduly prejudicial, although we do not here approve of the inequalities which exist at present between the practices of the carriers in trunk line and central freight association territories.

An order dismissing the complaint will be entered.

No. 10082.

E. I. DU PONT DE NEMOURS POWDER COMPANY

v.

PHILADELPHIA, BALTIMORE & WASHINGTON
RAILROAD COMPANY ET AL.

Submitted July 15, 1918. Decided October 29, 1918.

Rate on sulphuric acid, in tank-car loads, from Marcus Hook, Pa., to Hopewell, Va., found to have been unreasonable. Reparation awarded.

Harvey S. Farrow for complainant.

Henry Wolf Biklé for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

By DIVISION 3:

Complainant is a corporation, engaged in the manufacture of explosives at Hopewell, Va. By complaint filed February 26, 1918, it alleges that the rates charged by the defendants on 27 tank-car loads of sulphuric acid, shipped from Marcus Hook, Pa., to Hopewell, during August and September, 1916, were unreasonable and asks for reparation. Rates are stated in cents per 100 pounds.

The shipments moved over the lines of the Philadelphia, Baltimore & Washington Railroad to Delmar, Del., New York, Philadelphia & Norfolk Railroad to Norfolk, Va., and the Norfolk & Western Railway to destination. Each tank was loaded to its full gallonage capacity, the total scale weight being 2,711,680 pounds, upon which charges of \$4,609.85 were collected. Prior to August 1, 1916, the sixth-class rate of 14.6 cents, minimum weight capacity of tank, governed by the southern classification, applied on sulphuric acid from Marcus Hook to Hopewell. On that date it was increased to 17 cents, with the same minimum. On September 9, 1916, the defendants published from and to these points a commodity rate on sulphuric acid, in tank-car loads, of 14.6 cents, minimum weight capacity of tank. Effective April 4, 1918, this rate was increased to 17 cents, following *The Fifteen Per Cent Case*, 45 I. C. C., 303, and on June 25, 1918, it was further increased under General Order No. 28 of the Director General of Railroads.

Prior to and at the time the shipments moved the defendants published a commodity rate of 14.6 cents on nitrating acids, from Marcus Hook to Hopewell. In the southern classification a higher rating

applies on nitrating acids than on sulphuric acid, and the complainant contends that the rate on its shipments should have been no higher than on nitrating acids.

The distance from Marcus Hook to Hopewell is 328 miles and the 14.6-cent and 17-cent rates yielded, respectively, 8.9 and 10.4 mills per ton-mile. The complainant cites in comparison contemporaneous rates on acid, n. o. s., in tank-car loads, of 15.8 cents to Hopewell, which yield ton-mile revenues of 7.3 mills from Bayonne, N. J., 435 miles; 7.2 mills from Communipaw, N. J., 440 miles; 7.3 mills from Constable Hook, N. J., 434 miles; 7.3 mills from Grasselli, N. J., 435 miles; and 7.1 mills on sulphuric acid, in tank cars, from Undercliff, N. J., 442 miles.

For the defendants it was admitted that the rate assailed was unreasonable and a willingness expressed to make reparation to the basis of 14.6 cents.

We find that the rates attacked have not been justified and were unreasonable to the extent that they exceeded 14.6 cents per 100 pounds, minimum weight the marked capacity of tank. We further find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$650.80, with interest. An order will be entered accordingly.

51 I. C. C.

No. 9937.
BISSELL CARPET SWEEPER COMPANY
v.
BALTIMORE & OHIO RAILROAD COMPANY ET AL.

Submitted May 6, 1918. Decided October 29, 1918.

Less-than-carload ratings under official classification on hand carpet sweepers and carpet and vacuum cleaners combined, not shown to be unreasonable and complaint dismissed.

Ernest L. Ewing for complainant.

A. L. Viles, D. P. Connell, and E. M. Davis for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

The official classification provides the following ratings on carpet sweepers and carpet and vacuum cleaners combined:

Sweepers, hand:

Carpet:	L. C. L.
In boxes.....	2

Carpet and vacuum cleaners, combined:

In boxes.....	1
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The complainant seeks a change in the ratings to third and second class, respectively, with certain modifications in the descriptive language of the latter item. The carpet sweeper manufactured by it consists of a cylindrical brush inclosed in a three-ply wooden case, 12 by 9 by 3½ inches, mounted on four small steel wheels. The wheels are so adjusted that the tires, which are of rubber, bear directly upon the axle of the revolving brush, and as the sweeper is propelled over the floor with a handle attached to the box the brush gathers up the loose dirt, which is automatically deposited in small pans on each side of the brush. These sweepers are made in a number of styles, which differ only in the finish and grade of material used. The sale price ranges from \$18 to \$43 per dozen, less certain freight allowances. Whether these prices are to jobbers or retailers, and what the cost is to the consumer, do not appear. Sixty per cent of the complainant's sales are said to be of its medium-grade sweeper, selling for from \$23 to \$28 per dozen. They are shipped in lots of a dozen, packed with the handles detached, in a wooden box, each package weighing approximately 100 pounds. The weight per cubic

foot of the shipping package is approximately 17 pounds, and when containing the medium-grade sweeper the value per pound is said not to exceed 28 cents.

The complainant also manufactures a so-called vacuum sweeper, which is described as a carpet sweeper with a suction device added to take up the fine dust. The case, 16 by 12 by 7½ inches, is mounted on six wheels. The two additional wheels operate upon a crank shaft and transmit power to three small bellows within the case, thereby creating a suction through a flat steel nozzle set on the front under portion of the case. The dust gathered through the nozzle is deposited by the air current in a dust bag, which can be withdrawn from the case and emptied. This article is made in three styles, which differ only in the finish and grade of material used. Forty per cent of complainant's sales are said to consist of its medium-grade article, which sells for \$3.83 to the jobber and \$4.67 to the retailer, subject to freight allowances. The prices on the other grades are \$3.33 and \$5.83, and the retail prices are \$6, \$8, and \$9.50, respectively. Each cleaner is separately packed in a fiber-board carton under seal. The weight per cubic foot of the shipping package is approximately 14.7 pounds and the value per pound of the medium-grade cleaner is stated to be approximately 30 cents. The handles are separately packed.

The weight density of the shipping package is chiefly relied on to support the claim that a third-class rating should apply on the carpet sweeper. The complainant shows a substantial falling off in its sales in the last few years and, directing attention to the increase in the class rates in official classification territory, which became effective in the year 1917, urges that under a higher level of rates, inequalities in the classification become more pronounced and throw an accumulated burden on commodities inequitably rated. Admittedly, however, the decrease in complainant's business is attributable to conditions caused by the European war and to the suspension of its export trade.

The complainant represents that many years ago carpet sweepers were rated third class. In the first issue of the official classification in 1887, carpet sweepers, boxed, were rated second class, which rating has remained in effect continuously to the present date, except from January 1, 1900, to August 15, 1909, when the rating was first class. For the defendants it is testified that the second-class rating was restored in 1909 at complainant's request; and it is insisted that the function of the sweeper brings it into close relationship with various types of brushes, and that as brushes of the type used are generally rated first class there is nothing to warrant any further departure from that rating.

Carpet sweepers have been manufactured for many years, but vacuum cleaners are of more recent origin. Under "machinery and machines" the classification provides a first-class rating on vacuum cleaners not otherwise indexed by name, and with the exception of those "mounted on wagons," and "stationary or mounted on hand trucks," for which specific ratings are named, that descriptive item applies to all vacuum cleaners, including a type embodying the vacuum principle of the combination device manufactured by complainant with the brush attachment omitted but resembling that article in general appearance. Complainant's witness testified that practically all vacuum cleaners now manufactured are operated by electricity. The complainant commenced the manufacture of the combined sweeping and cleaning device in 1914, and the present rating, established on January 1, 1916, was the first specific rating provided by the classification on the combination article. The complainant urges that its "product includes nothing that may properly be described or classified as a vacuum cleaner nor as a carpet sweeper and vacuum cleaner combined," and asks that the words "carpet and vacuum sweeper" be substituted for the descriptive language of the classification and the rating made second class. The descriptive term suggested is a trade name adopted to preserve the identity of the device to the carpet sweeper which had an established reputation. The combination cleaner is described by complainant's witness as "a complete article of the vacuum cleaner and carpet sweeper combined." Moreover, cleaning by the process of air suction is not sweeping, and as the device performs its function by the principles of sweeping and suction, there can be no valid objection to the language of the descriptive item.

It is established by the record that while the sweeper and vacuum cleaner are, for purposes of convenience, combined in one case, the mechanical principle controlling the operation of each is entirely separate and distinct, and the particularly essential function of the combination article is the suction feature; that, as compared with the sweeper, the combination device is a more highly developed article, requiring the application of additional patent rights in its manufacture, moves in materially less volume, and the shipping package is both materially smaller and less desirable from a transportation standpoint; and that, while there is no very material difference in the weight and value per cubic foot of the carpet sweepers and the combination cleaner manufactured by complainant, carpet sweepers have a substantially greater weight and lower value per cubic foot than other combination devices similar to complainant's.

Upon the facts of record we find that the ratings assailed are not shown to be unreasonable, and an order dismissing the complaint will be entered.

No. 9593.¹

JOSEPH SAVAGE

v.

CHICAGO & NORTH WESTERN RAILWAY COMPANY
ET AL.

Submitted January 31, 1918. Decided October 29, 1918.

Rate on coal, in carloads, from Alger, Wyo., to Central City, S. Dak., found to have been unreasonable. Reparation awarded.

Robert B. Hayes, D. L. Kelley, and Oliver E. Sweet for complainants.

W. H. Jones for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

The complainants were engaged in business at Central City, S. Dak., Joseph Savage as a coal dealer and the Black Hills Brewing Company, a corporation, operating a brewery. In their complaints filed March 12 and 13, 1917, they seek reparation, alleging that the rates charged by the defendants on 22 carloads of soft coal, shipped between December 1, 1913, and May 2, 1914, inclusive, from Alger, Wyo., to Central City, through Deadwood, S. Dak., were unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that they exceeded the rates subsequently established by way of Crawford, Nebr. Claims covering these shipments were informally presented to the Commission August 19 and October 2, 1914, and upon authority granted by us refund was made to the respective complainants to the basis of rates of \$2.25 and \$2 per net ton subsequently established on lump coal and coal other than lump, respectively. It later appeared that the reduced rates had not been established over the route of movement and this authority we revoked. March 8, 1917, the complainant in No. 9705 again paid to the carriers the amount refunded but the amount refunded to the complainant in No. 9593 has not been repaid and this complainant in reality is only seeking to be relieved of liability for the outstanding undercharges. Rates are stated in amounts per net ton.

¹ This report also embraces No. 9705, Black Hills Brewing Company v. Same.

Alger and Central City are local points on the Chicago, Burlington & Quincy Railroad, hereinafter termed the Burlington, and the Chicago & North Western Railway, hereinafter called the North Western, respectively, Alger in the Sheridan, Wyo., group of mines and Central City in the Black Hills district of South Dakota. The shipments moved over the Burlington to Deadwood and over the North Western beyond. No. 9593 includes 7 shipments, 2 of lump coal, aggregating 159,400 pounds, on which charges of \$233.04 were collected, and 5 of coal other than lump, aggregating 323,600 pounds, on which charges of \$432.64 were collected; No. 9705 includes 15 shipments of coal other than lump, aggregating 1,033,100 pounds, on which charges of \$1,381.23 were collected. These charges were based on the following applicable rates: \$2.924 on lump coal and \$2.674 on coal other than lump, composed, respectively, of the Burlington's local commodity rates of \$2.25 on lump coal and \$2 on coal other than lump to Deadwood, plus the North Western's local distance commodity rate of \$0.674, applicable to soft coal beyond.

In *Sheridan Chamber of Commerce v. C., B. & Q. R. R. Co.*, 26 I. C. C., 638, and 28 I. C. C., 250, we found; among other things, that the rates on coal from the Sheridan group of mines to various points on the North Western in South Dakota, including Central City, should be no higher than the rates from Hudson, Wyo., to the same destinations. Thereupon, effective November 20, 1913, the defendants established the Hudson basis of rates of \$2.25 on lump coal and \$2 on coal other than lump to those destinations generally; but by inadvertence, it is testified, Central City was not included as a destination point. On May 15, 1914, the defendants established joint rates of \$2.25 on lump coal and \$2 on coal other than lump to Central City, with routing, however, restricted to apply through Crawford, Nebr. These shipments did not move by way of Crawford. These rates remained in effect until July 20, 1917, when they were increased to \$2.40 and \$2.15, following *The Fifteen Per Cent Case*, 45 I. C. C., 303, and they have since been further increased by the Director General. The complainants are satisfied with Crawford route, and their only interest in this case is with respect to reparation.

For the defendants it was testified that Deadwood is not generally used as a junction point between their lines; that operating conditions are much more difficult over that route than over the Crawford route; and that with respect to this traffic the Crawford route, although over 100 miles longer, is the logical and natural one. At the time of the hearing the Burlington had maintained for some years the Hudson basis of rates from the Sheridan group to points on its line, including those in the Black Hills district, and while those rates necessitated only a one-line haul over the line of that defendant, they

nevertheless applied by way of the route alleged to present the more difficult operating conditions. At the time of movement the combination rates to Central City based on Crawford were materially higher than the Deadwood combinations. By the route of movement the distance from Alger to Central City is 341 miles as against 452.7 miles over the route through Crawford. On the shipments consisting of coal other than lump, the earnings over the route of movement at the rates charged were 7.8 mills per ton-mile, and, based on average loading of 67,835 pounds per car for 20 cars, car-mile earnings of 26.6 cents, while at a rate of \$2 they would be 5.86 mills and 19.9 cents, respectively. A willingness to pay the reparation asked was expressed for the defendants.

We find that the rates assailed were unreasonable to the extent that they exceeded \$2.25 per net ton on lump coal and \$2 per net ton on coal other than lump; that the complainants made the shipments as described; that the complainant in No. 9705 paid and bore the charges on shipments made by it; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record and the complainant should prepare a statement showing the details of the shipments in accordance with Rule V of the Rules of Practice, also specifying the dates on which the charges were paid, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified, we will consider the entry of an order awarding reparation. The defendants are authorized to waive the collection of the undercharges in No. 9593.

51 I. C. C.

No. 8753.
FORDS PORCELAIN WORKS
v.
LEHIGH VALLEY RAILROAD COMPANY ET AL.

Submitted March 16, 1917. Decided October 29, 1918.

1. Increased rate on earthenware urinals, in less than carloads, from Perth Amboy, N. J., to Seattle, Wash., found not justified. Reparation awarded.
2. Claim for refund of freight charges collected on shipment made to replace one damaged in transit held to be a matter for adjustment as an integral part of claim for property damage.

R. A. Koontz for complainant.

S. C. Pratt and *O. W. Dynes* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

By DIVISION 3:

The complainant is Abel Hansen, engaged in the manufacture of porcelain and earthenware at Perth Amboy, N. J., under the name of Fords Porcelain Works. By complaint filed March 25, 1916, as amended, he alleges that the rate of \$3.70 per 100 pounds charged by the defendants on three less-than-carload shipments of earthenware urinals forwarded from Perth Amboy to Seattle, Wash., on June 30, July 9, and August 5, 1914, was unreasonable; also that on account of defendants' negligence the shipment of July 9 arrived at destination broken and a total loss, necessitating the making of the shipment of August 5. Reparation is sought for the difference between the charges paid and those that would have accrued at a rate of \$1.50, also in the amount of the total freight charges paid on the shipment of July 9, 1914; and the establishment of the \$1.50 rate is prayed. Rates are stated in amounts per 100 pounds.

The claim for refund of the freight charges collected on the shipment made to replace the one damaged in transit is appropriately a matter for adjustment as an integral part of the claim for the property damage. *Lost or Damaged Freight Replacement*, 43 I. C. C. 257. This claim will not be further considered, except in so far as it is herein found to include unreasonable charges.

The shipments, aggregating apparently 10,525 pounds, moved over the defendants' lines. The first-class less-than-carload rate of \$3.70, governed by the western classification, was applicable. The

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charges collected can not be determined on this record, but it appears that some undercharges are outstanding.

From October 10, 1910, to April 15, 1913, a commodity rate of \$2 applied on earthenware urinals, in less than carloads, from Perth Amboy to Seattle. On the latter date this rate was canceled, leaving applicable the class rate. It was pointed out by the complainant that this commodity is rated third class in the southern classification; that since the cancellation of the \$2 rate the carload rate from Perth Amboy to Seattle has been reduced from \$1.70 to \$1.25; that the contemporaneous commodity rate on earthenware and chinaware, in less than carloads, from and to the same points was \$1.50; and that the rating in all three classifications on lavatory basins, shower-bath receptors, and water-closet bowls is lower than first class. After the first shipment moved the rating on shower-bath receptors in official classification was increased to first class. In the western classification most of these commodities are rated second class. Enameled iron and steel urinals and urinal gutters are also rated lower than first class. After this case was submitted the less-than-carload rate on earthenware and chinaware was increased to \$2.50 under our Fifteenth Section Order No. 367.

The complainant testified that up to the time the \$2 rate was canceled he made shipments to numerous western points, including Seattle, but that since the first-class rate of \$3.70 became effective he has been unable to make any shipments west of St. Louis, Mo., and Chicago, Ill., except those described in this proceeding. Also, that shortly prior to the shipments a rate of \$1.50 was quoted him by the initial carrier, but this affords no basis for an award of reparation. *Poor Grain Co. v. C., B. & Q. Ry. Co.*, 12 I. C. C., 418.

The defendants observe that the cancellation of the commodity rate was permitted by us in *Transcontinental Commodity Rates, West Bound*, 26 I. C. C., 456.

We find that defendants have not justified the rate assailed, and that it was unreasonable to the extent that it exceeded \$2.50 per 100 pounds. We further find that the complainant made shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation with interest. The exact amount of reparation due can not be determined on this record, and the complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice; also specifying the dates on which the charges were paid, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified we will consider the

entry of an order awarding reparation. As the defendants' lines are now subject to federal control and the Director General has not been made a party defendant we can make no finding and enter no order for the future.

No. 9704.

PAGE & HILL COMPANY

v.

CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY
COMPANY ET AL.

Submitted June 24, 1918. Decided October 29, 1918.

Carload of posts from Boy River to Minneota, Minn., moving interstate, found to have been misrouted. Reparation awarded.

L. A. Page, jr., for complainant.

Albert H. Lossow for Minneapolis, St. Paul & Sault Ste. Marie Railway Company; *James B. Sheean* for Chicago, St. Paul, Minneapolis & Omaha Railway Company; and *Robert H. Widdicombe* for Chicago & North Western Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

The complainant, a corporation engaged in the lumber business at Minneapolis, Minn., alleges by complaint seasonably filed, that due to misrouting, unreasonable charges were collected on a carload of posts shipped May 2, 1916, from Boy River to Minneota, Minn., by an interstate route. Reparation is asked. Rates are stated in cents per 100 pounds.

The facts are stipulated. The shipment was routed by the complainant in the bill of lading, "Soo-C. & N. W." It moved by way of the Minneapolis, St. Paul & Sault Ste. Marie Railway, hereinafter termed the Soo Line, to Minnesota Transfer, Minn.; Chicago, St. Paul, Minneapolis & Omaha Railway to Mankato, Minn.; and Chicago & North Western Railway beyond, 468.8 miles. There is no direct connection between the initial and delivering lines. It is stated in the stipulation that charges were collected in the sum of \$60.63 at a rate of 20.9 cents, based on 28,200 pounds, the actual

weight. The 20.9-cent rate was legally applicable, but the charges at that rate based on the actual weight should have been \$58.94. The freight bill filed in the record raises a doubt as to the accuracy of the stipulation concerning the amount of the charges collected, but apparently the shipment was overcharged \$1.69. Defendants will be expected to check their records carefully and if an overcharge exists refund, with interest, should be made promptly.

Contemporaneously a rate of 8.2 cents applied on posts, in carloads, from Boy River to Paynesville, Minn., by way of the Soo Line; a rate of 6.4 cents thence to Marshall, Minn., over the Great Northern Railway, and a rate of 3.9 cents beyond by way of the Chicago & North Western, making a combination of 18.5 cents. The distance over this intrastate route is 348 miles.

We find that defendant Minneapolis, St. Paul & Sault Ste. Marie Railway Company misrouted the shipment; that complainant paid and bore the charges thereon, and was damaged by the misrouting to the extent of the difference between the charges applicable over the route of movement and those that would have accrued had the shipment been forwarded over the route to which the 18.5-cent rate applied; and that it is entitled to reparation from the Minneapolis, St. Paul & Sault Ste. Marie Railway Company in the sum of \$6.77, with interest.

An order awarding reparation will be entered.

51 I. C. C.

No. 9911.

FORT SMITH COMMISSION COMPANY

v.

MIDLAND VALLEY RAILROAD COMPANY ET AL.

Submitted January 20, 1918. Decided October 29, 1918.

Rate on potatoes, in carloads, from Webbers Falls, Okla., to Shreveport, La., found to have been unreasonable. Reparation awarded.

C. D. Mowen for complainant. .

J. M. Souby for Kansas City Southern Railway Company, Texarkana & Fort Smith Railway Company, and Midland Valley Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

The complainant is a corporation engaged in the fruit and produce business at Fort Smith, Ark. By complaint, seasonably filed, it alleges that the rate charged by the defendants on two carloads of potatoes shipped from Webbers Falls, Okla., to Shreveport, La., in June and July, 1916, was unreasonable, unduly prejudicial, and in violation of the long-and-short-haul rule of the fourth section. Reparation and the establishment of reasonable rates are asked. Rates are stated in cents per 100 pounds.

The shipments, weighing 24,872 and 28,950 pounds, moved over the Webbers Falls Railroad to Warner, 10.4 miles, and beyond, the first over the Midland Valley Railroad and the lines of the Missouri, Kansas & Texas system, approximately 400 miles, and the second over the Midland Valley, the Kansas City Southern, and the Texarkana & Fort Smith railways, approximately 300 miles. Charges were collected on the first shipment in the sum of \$131.82 and on the second in the sum of \$153.44, at the applicable combination rate of 53 cents, composed of a rate of 5 cents to Warner and the class C rate of 48 cents beyond. The complainant's attack is particularly against the 48-cent component, which it contends should not have exceeded 28 cents.

Irrespective of destination, rates on potatoes from Webbers Falls in effect at the time the shipments moved were made 5 cents over Warner, which point, the complainant states, is representative of the potato-producing district in Oklahoma south of the Arkansas River. The 48-cent rate yielded, over the short-line route, 32 mills per ton-mile, and over the other route 24 mills per ton-mile. The complainant cites a commodity rate of 25.5 cents contemporaneously

applicable from Warner to 10 representative points in Texas, including Fort Worth and Dallas, the average distance being stated as 243 miles. Based on that distance, the average earnings per ton-mile would be 20.99 mills. The complainant also cites a rate of 40 cents contemporaneously applicable from Warner to 20 representative destinations in Texas common point territory, for distances ranging from 248 to 562 miles, the average distance being stated as 396 miles. For this average distance the 40-cent rate would yield 20.2 mills. At the time of movement a rate of 34 cents applied over both routes from Warner through Shreveport to New Orleans, La. The departures from the long-and-short-haul rule of the fourth section of the act were protected by appropriate applications. The short-line distance from Shreveport to New Orleans is over the line of the Louisiana Railway & Navigation Company, 306.5 miles, which, added to the short-line distances to Shreveport of 310.4 miles from Webbers Falls and 300 miles from Warner, makes a total distance from Webbers Falls to New Orleans of approximately 617 miles and from Warner of approximately 607 miles.

The Missouri, Kansas & Texas and the Webbers Falls were not represented at the hearing. On behalf of the other defendants it was stated that the 48-cent component from Warner to Shreveport was not considered unreasonable, but no evidence was introduced tending to establish its reasonableness. Waskom, Tex., is located on the Missouri, Kansas & Texas Railway of Texas, 20 miles west of Shreveport over the longer route of movement, and is among the Texas points referred to by complainants as taking the 40-cent rate from Warner.

We find that the rate assailed was unreasonable to the extent that the components from Warner to Shreveport exceeded 40 cents per 100 pounds. We further find that the complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued on the basis herein found reasonable; and that it is entitled to reparation from the Midland Valley Railroad Company, Missouri, Kansas & Texas Railway Company, and Missouri, Kansas & Texas Railway of Texas in the sum of \$19.90, with interest, and from the Midland Valley Railroad Company, Kansas City Southern Railway Company, and Texarkana & Fort Smith Railway Company in the sum of \$23.16.

The Director General, in exercise of powers conferred upon the President by the federal control act, has initiated a rate which exceeds that assailed. This increased rate is not in issue and the Director General has not been made a party defendant. Upon the present pleadings the rate so increased is not subject to review in this proceeding. An order awarding reparation will be entered.

No. 9903.

CHARLES BOLDT COMPANY

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY ET AL.

Submitted March 30, 1918. Decided October 29, 1918.

Rate on glass bottles, in carloads, from Huntington, W. Va., to St. Paul and Minneapolis, Minn., found to have been unreasonable to the extent that it exceeded the aggregate of the intermediate rates contemporaneously in effect over the routes of movement. Reparation awarded.

T. J. McLaughlin and *F. M. Renshaw* for complainant.

William A. Eggers for Baltimore & Ohio Railroad Company.

R. D. Hunter for Cleveland, Cincinnati, Chicago & St. Louis Railway Company and Chicago, Milwaukee & St. Paul Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

The complainant is a corporation engaged in the manufacture of bottles at Cincinnati, Ohio. By complaint seasonably filed it alleges that the rate charged on numerous carloads of empty glass bottles shipped from Huntington, W. Va., to St. Paul and Minneapolis, Minn., subsequent to December, 1915, was unreasonable and in violation of the fourth section in that it exceeded the aggregate of the intermediate rates contemporaneously in effect to and from Danville, Ill. Reparation is asked. Rates are stated in cents per 100 pounds.

Between December 9, 1915, and August 18, 1917, inclusive, the complainant shipped 37 carloads of glass bottles, 3 of which originated on the Baltimore & Ohio Railroad and the remainder on the Chesapeake & Ohio Railway. They moved by various routes over defendants' lines. The exact routing in each instance is not shown, but apparently all of the shipments moved, in accordance with complainant's instructions, through either Chicago or Peoria, Ill. Charges were collected at the applicable joint fifth-class rate of 37.4 cents, minimum 30,000 pounds, governed by the official classification. Contemporaneously there was in effect from Huntington to Chicago and Peoria a fifth-class rate of 18.9 cents, minimum 30,000 pounds, and a commodity rate beyond of 17.5 cents, minimum 30,000 pounds, making a combination of 36.4 cents. This departure from the pro-

visions of the fourth section was protected by an appropriate application which was heard in another proceeding now pending.

There was in effect at the time these shipments moved a fifth-class rate of 17.3 cents, minimum 30,000 pounds, from Huntington to Danville, and a commodity rate of 18.5 cents, minimum 30,000 pounds, beyond, making a combination of 35.8 cents. On September 20, 1917, the fifth-class rate from Huntington to St. Paul and Minneapolis was increased to 40 cents and, effective November 20, 1917, a commodity rate of 38 cents was established. On September 20, 1917, the fifth-class rate to Danville was increased to 19 cents, making the combination through that point 37.5 cents. Effective December 20, 1917, the commodity rate from Huntington to St. Paul and Minneapolis was reduced to 37.5 cents.

Although admitting that the shipments did not move through Danville, the complainant contends that the rate charged over the routes the shipments moved should not have exceeded the 35.8-cent combination, and cited various joint rates from Huntington to St. Paul and Minneapolis, which, it was testified, equal the combination through Danville. This situation is said by complainant to be typical of the joint rates from Huntington to these points. For the defendants it was testified that the rates from Danville were low, being influenced by the rates from St. Louis, Mo., which were affected by water competition. We have repeatedly held that the fair measure of the reasonableness of a joint rate which exceeds a combination between the same points over the same route is the lowest combination that would apply if the joint rate were canceled. Only the lowest combination over the route of movement is intended.

We find that the rate assailed was unreasonable to the extent that it exceeded the lowest combination of intermediate rates subject to the act to regulate commerce contemporaneously in effect over the routes of movement; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued on the basis of the rates herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record, and the complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the date on which the charges were paid, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified, we will consider the entry of an order awarding reparation.

No. 9630.

VARLEY-WOLTER COMPANY

v.

BALTIMORE & OHIO RAILROAD COMPANY ET AL

Submitted September 12, 1917. Decided October 29, 1918.

1. Rates charged on potatoes, in carloads, from Carpenter and Otranto, Iowa, to various points east of the Indiana-Illinois state line, found to have been illegal.
2. Certain shipments found to have been misrouted by the initial carrier.
3. Reparation awarded.

O. W. Tong for complainant.*C. A. Lahey* for Chicago, Milwaukee & St. Paul Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

The complainant is a corporation engaged in the produce business at Minneapolis, Minn. By complaint filed April 23, 1917, as amended, it seeks reparation on 25 carloads of potatoes shipped between September 24 and October 23, 1915, inclusive, from Carpenter and Otranto, Iowa, to Indianapolis, Ind., Detroit, Mich., Cleveland, Van Wert, Continental, and Toledo, Ohio, and Pittsburgh, Pa., alleging that the rates charged by the defendants were unreasonable and in excess of the aggregate of the intermediate rates to and from Lyle, Minn. Rates are stated in cents per 100 pounds.

Carpenter and Otranto are on the Chicago, Milwaukee & St. Paul Railway, hereinafter called the Milwaukee, between Mason City, Iowa, and Austin, Minn. The shipments moved over defendants' lines, some by way of Mason City and others by way of Austin. Lyle is north of Carpenter and Otranto, and those shipping points are intermediate Lyle to Prairie du Chien, Wis., on traffic moving through Mason City. Joint through rates were in effect from Lyle and Prairie du Chien and the tariffs naming such rates carried the following intermediate clause:

The rate from any point not indexed herein and which is located or may be established between two points from which rates are published will be the rate from the next more distant station.

The next more distant station in this case was Lyle, and rates from Lyle were therefore legally applicable on the shipments which moved through Mason City.

Shipments by way of Austin moved through Lyle. On these the tariffs prescribed as specific through rates the sums of the proportional class C rates to Savanna, Ill., and proportional rates beyond. Such rates, as shown in the following table, exceeded the rates from Lyle, which, as stated, were applicable by way of Mason City, and also exceeded, except to Indianapolis, the aggregates of the intermediate rates—class C rates to Lyle plus the joint rates beyond contemporaneously in effect:

To—	Rates charged.		Applicable through rates via Austin. ¹		Rates from Lyle.	Lyle combination rates.	
	From Carpenter.	From Otranto.	From Carpenter.	From Otranto.		From Carpenter.	From Otranto.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Indianapolis.....	26.1	.....	26.1	.....	23.1	28.1	.....
Detroit.....	30.8	.....	30.8	.....	23.1	28.1	.....
Cleveland.....	32.4	33.8	32.4	32.6	26.3	31.3	30.3
Van Wert.....	.....	29.4	.....	29.4	23.1	.....	27.1
Continental.....	.....	30.6	.....	30	23.1	.....	27.1
Toledo.....	.....	31	.....	31	23.1	.....	27.1
Pittsburgh.....	{ 35.5 36.9 }	36.9	35.5	35.7	26.3	31.3	30.3

¹ Via Mason City the through rates from Lyle were applicable.

The tariffs contained no restrictions with respect to routing by way of Mason City or Austin. The shipments could therefore have been sent through either gateway, and since the shippers gave no instructions and none were incorporated in the bills of lading to govern the movement up to the point where the Milwaukee's deliveries to connections are made, that carrier misrouted the shipments through Austin and deprived the shipper of the benefit of the Lyle rates otherwise applicable from Carpenter and Otranto as intermediate points.

The departures from the provisions of the fourth section resulting from the charging of higher rates on traffic through Lyle than the aggregates of the intermediate rates were protected by appropriate fourth section applications not heard with this case.

On two shipments made in October, 1915, one from Carpenter to Cleveland and the other from Otranto to Van Wert, charges were assessed at billed weights less than the carload minima applicable east of Savanna. The minima on potatoes from Carpenter and Otranto to Savanna or Lyle were 30,000 pounds, governed by the western classification, and beyond Savanna or Lyle, 30,000 pounds during September and 36,000 pounds during October, governed by the official classification. One shipment from Carpenter to Pittsburgh was reconsigned to Leechburg, Pa., a point taking the same

rates as Pittsburgh, under a tariff rule permitting reconsignment at the through rate to final destination plus a charge of \$5 per car, which charge is not attacked.

A number of the shipments were billed to Chicago, Ill., and re-consigned to final destinations. The Milwaukee tariff published a charge of \$2 for reconsignment at Chicago, but also provided that:

When destination of shipment is changed in transit by proper authority, and before car reaches point to which billed, reconsignment charge as above provided will not apply.

The reconsignment orders were delivered by the complainant to the Milwaukee at Minneapolis, in accordance with the usual practice, and by it wired to Chicago, where the reconsignments were effected. In all but three instances the reconsignment orders were given one or more days before the arrival of the cars at Chicago. In the three instances mentioned the orders were given on the day the cars reached Chicago, but it does not appear whether before or after their arrival. Reconsignment charges were not collected on any of the shipments. Such charges should have been assessed on the three cars mentioned, and undercharges to this extent exist.

We find that the Chicago, Milwaukee & St. Paul Railway Company misrouted the shipments which moved by way of Austin; that the complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged by the misrouting to the extent of the difference between the charges paid and those that would have accrued at the joint rates contemporaneously applicable from Lyle; and that it is entitled to reparation, with interest, from the Chicago, Milwaukee & St. Paul Railway Company, also to reparation from the defendants in the amount of the outstanding overcharges. The exact amount of reparation due can not be determined on this record, and the complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the dates on which the charges were paid, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

No. 9810.

BARTLETT-COLLINS GLASS COMPANY,

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted February 1, 1918. Decided October 29, 1918.

Rates and minima on empty slack barrels, in carloads, from Coffeyville, Kans., and Joplin, Mo., to Sapulpa, Okla., found to have been unreasonable. Reparation awarded.

H. C. McCord for complainant.

P. H. Welborne and *Arthur E. Haid* for St. Louis-San Francisco Railway Company.

J. F. Garvin for Missouri, Kansas & Texas Railway Company and its receiver.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

The complainant is a corporation engaged in the manufacture of glassware at Sapulpa, Okla. By complaint filed August 3, 1917, as amended, it alleges that the defendants' carload rates to Sapulpa of 31 cents per 100 pounds from Coffeyville, Kans., and 29.5 cents per 100 pounds from Joplin, Mo., and the carload minimum of 14,000 pounds, on empty slack barrels, are unreasonable, and that the rate from Joplin is also unduly prejudicial. It asks for reparation on numerous carloads of empty slack barrels which moved between September 23, 1915, and July 7, 1917, both inclusive, and the establishment of reasonable rates. Rates are stated in cents per 100 pounds.

Coffeyville is in the southeastern part of Kansas. Joplin is in the southwestern part of Missouri. Sapulpa is a local point on the St. Louis-San Francisco Railway, hereinafter called the Frisco, in the northeastern part of Oklahoma. The shipments from Coffeyville moved over the St. Louis, Iron Mountain & Southern Railway to Claremore, Okla., and thence over the Frisco, 93 miles. Charges were collected at a combination rate of 31 cents, minimum 14,000 pounds subject to rule 6-B of the western classification, made up of the class B rates of 17 cents to Claremore and 14 cents beyond. The shipments from Joplin moved over the Frisco, 134 miles. Charges

were collected at the class B rate of 29.5 cents, minimum 14,000 pounds subject to rule 6-B of the western classification. On January 29, 1917, a joint commodity rate of 30 cents was established from Coffeyville to Sapulpa.

The complainant cited by way of comparison the following rates:

From—	To—	Distance.	Rate.
		Miles.	Cents.
Kansas points.....	Nebraska points.....	134	¹ 17.5
Do.....	do.....	93	¹ 19.5
Do.....	Colorado points.....	134	¹ 23.5
Kansas City, Mo.....	Sapulpa, Okla.....	277	² 30.0
Memphis, Tenn.....	do.....	482	² 30.0
St. Louis, Mo.....	do.....	438	² 35.0

¹ Minimum 14,000 pounds. ² Minimum 20,000 pounds.

Also a rate of 13.5 cents, minimum 10,000 pounds, prescribed in *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 41 I. C. C., 83, for a distance of 134 miles, for single-line application from Shreveport, La., to Texas points. No evidence was adduced as to the volume of movement under any of the rates cited. The car-mile earnings on basis of the rates assailed and the minimum of 14,000 pounds applicable to a 36-foot car were 46.7 cents from Coffeyville and 30.8 cents from Joplin. The complainant contends that rates of 15 cents, minimum 10,000 pounds, would be reasonable. The car-mile earnings on these bases would be 16.13 and 11.2 cents from Coffeyville and Joplin, respectively.

With respect to the minima, complainant relies on *Dallas Cooperage & Woodenware Co. v. G., C. & S. F. Ry.*, 45 I. C. C., 468, in which we prescribed a minimum of 10,000 pounds subject to rule 6-B of the western classification, on empty slack barrels, in carloads, from Dallas and Oak Cliff, Tex., to numerous points. No differentiating circumstances being shown in our opinion that case should be followed in so far as the minimum weight is concerned.

The defendants cite a rate of 42 cents, minimum 14,000 pounds, on empty slack barrels from Fort Smith, Ark., to Sapulpa for a distance of 234 miles, yielding 25.13 cents per car-mile; and a rate of \$60 per car from Dallas to Ada, Okla., a distance of 161 miles, yielding 37.27 cents per car-mile. The latter rate is blanketed over a considerable territory, and the average distance to points in the group is from 175 to 200 miles. The defendants also cited rates on hay from Joplin and Coffeyville to Sapulpa of 18 and 29 cents, respectively, minimum 22,000 pounds; and explain that the relatively higher rate from Coffeyville to Sapulpa than from Joplin is due to the fact that in connection with the former the distance is shorter and a two-line haul is necessary, whereas it is a one-line haul from Joplin.

The complainant has a competitor at Muskogee, Okla., a local point on the Frisco. The rate from Joplin to Muskogee, 154 miles, was 19.5 cents, minimum 14,000 pounds, graduated for cars of different lengths. Sapulpa is intermediate Joplin to Muskogee by way of the Frisco, but the 19.5-cent rate to Muskogee was published subject to rule 77 of Tariff Circular 18-A, which is a substantial compliance with the fourth section.

We find that the rates and minima assailed were unreasonable to the extent that they exceeded rates to Sapulpa of 20 and 25 cents per 100 pounds, minimum 10,000 pounds, subject to rule 6-B of the western classification, from Coffeyville and Joplin, respectively. No proof of damage from any undue prejudice that may have existed in connection with the rate from Joplin to Sapulpa and Muskogee was adduced. We further find that the complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued on the bases herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined upon the present record, and the complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the dates on which the charges were paid, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation. Since this case was submitted the rates assailed have been increased under General Order No. 28 of the Director General who has not been made a party defendant. No finding or order affecting them for the future can be made effective in the present state of the pleadings.

No. 10122.

STANDARD TIME ZONE INVESTIGATION.

Submitted November 26, 1918. Decided December 9, 1918.

Order defining limits of standard time zones, 51 I. C. C., 273, modified so as to include Apalachicola, Fla., within the limits of the Eastern standard time zone.

J. H. Cook for city of Apalachicola, Fla., and Apalachicola Chamber of Commerce.

SUPPLEMENTAL REPORT OF THE COMMISSION.

AITCHISON, Commissioner:

Our report in the above matter, defining the limits of the various standard time zones, is to be found in 51 I. C. C., 273. The boundary line between the Eastern and Central standard time zones there prescribed follows the Apalachicola River through Apalachicola. That city now uses Central time, and no change was made in this regard by our report and order. The city commission of the city has shown by resolution that it is for the best interests of the community that it should be included in the Eastern standard time zone, and the Apalachicola Chamber of Commerce has made a similar representation for the city and the whole of Franklin County, Fla.

The change requested as to Apalachicola will involve no conflict with other provisions of the order heretofore entered, and should be made for the greater convenience of commerce. An appropriate order will be entered.

51 I. C. C.

No. 9728.

CALIFORNIA CANNERIES COMPANY

v.

SOUTHERN PACIFIC COMPANY ET AL.

Submitted October 9, 1918. Decided December 4, 1918.

1. Refusal of the Southern Pacific Company, having the line haul, to absorb switching charges on interstate noncompetitive carload traffic from or to the complainant's plant on a track connecting with the terminals of the Atchison, Topeka & Santa Fe Railway Company in San Francisco, while at the same time absorbing the switching charges on similar traffic from or to the plant of a competitor on a track connecting with a belt line owned and operated at that point by the state of California, found to subject the complainant to undue and unreasonable prejudice and disadvantage.
2. The trunk lines serving San Francisco being unified and coordinated under federal control, there is no basis for any distinction between competitive and noncompetitive traffic.
3. Reparation denied.

Sanborn & Roehl and Jesse C. Adkins for complainant.

F. H. Wood and C. W. Durbrow for Southern Pacific Company.

G. H. Baker for Atchison, Topeka & Santa Fe Railway Company.

Seth Mann for San Francisco Chamber of Commerce, intervener.

R. Walton Moore for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HARLAN, AND HALL.

HARLAN, *Commissioner*:

This case was submitted upon an agreed statement of facts, supplemented by certain evidence offered by the complainant in respect of the damages said to have been sustained by it as the result of the undue prejudice to which, as is alleged, it was and is still being subjected by the defendants. The defendants also offered evidence in explanation of one of the paragraphs of the stipulation. In an examiner's proposed report, served upon the parties in interest in accordance with the usual practice and discussed at length on the oral argument, the stipulation was set forth in full, together with a summary of the additional evidence adduced on the hearing. For our present purposes, however, a brief statement of the situation will suffice.

The plant of the complainant in San Francisco is on a private track connecting with the terminals of the Atchison, Topeka & Santa Fe Railway. The California Packing Corporation, which is

the complainant's chief competitor in the business of packing and canning fruits and vegetables, also has a plant in San Francisco, which is reached by a private track connecting with the rails of the State Board of Harbor Commissioners of San Francisco Belt Railroad. The latter road is owned, maintained, and operated by the state of California and is merely a local switching line. It therefore does not and can not compete with the defendant carriers for line-haul traffic, either state or interstate.

The controversy grows out of the fact that to and from industries on the belt line the Southern Pacific, the chief defendant in the case, absorbs the switching charges of the belt line both on competitive and noncompetitive traffic; it also absorbs the switching charges of the Santa Fe on all traffic to and from wharves in San Francisco served by the Santa Fe. But to industries on the terminals of the Santa Fe at that point the Southern Pacific, when it has the line haul, absorbs the switching charges of the Santa Fe only on competitive traffic; on noncompetitive traffic the Santa Fe's switching charge of \$2.50 per car is imposed in addition to the line-haul rate. In other words, while the complainant, for example, on its inbound shipments of fruits and vegetables from noncompetitive points, is required to pay the Santa Fe's switching charge of \$2.50 per car in addition to the line-haul rate of the Southern Pacific, the latter road absorbs the switching charges of the belt line and exacts only its line-haul rate on fruits and vegetables shipped from the same points to the plant of the complainant's competitor on the belt line.

This rate situation is alleged to be unjustly discriminatory and unduly prejudicial, and to subject the complainant to the payment of unreasonable rates and charges.

The complainant and the California Packing Corporation are in active and keen competition with each other. To a large extent they secure their fruits and vegetables from growers in the same general territories, and they ship their finished products to the same general markets of consumption. In the purchase of their raw materials the two concerns come into close rivalry; the record shows that at times a difference of 25 cents a ton in the price offered to the growers will determine which company will become the purchaser. The packed and canned products are also sold on a narrow margin of profit. In 1915 and 1916 the complainant stopped canning tomatoes because they were then being sold on such a close basis as to make it unprofitable. In now seeking to be put upon an equality in transportation rates and charges with its principal competitor the complainant illustrates its present disadvantages by showing that the imposition by the Southern Pacific, in addition to the line-haul rate, of the Santa Fe's switching charge on the two or three inbound carloads of fresh tomatoes that are necessary to produce one outbound carload of

canned tomatoes, together with the switching charge on the outbound carload, puts upon the canned products of the complainant a burden of at least \$10 a car which its competitor, the California Packing Corporation, altogether escapes.

The line-haul rates of the Southern Pacific are not attacked by the complainant as unreasonable, nor is the Santa Fe's switching charge of \$2.50 a car assailed as intrinsically excessive. Nor does the complainant undertake of record specifically to show that the imposition of a switching charge, in addition to the line-haul rate, makes an aggregate charge on its noncompetitive shipments that is of itself unreasonable. What it seeks, under its complaint and upon the facts stipulated and shown of record, is to be placed upon an equality, in rates and charges, with its principal competitor.

The defendants point out that on competitive traffic the complainant pays no switching charges in addition to the line-haul rates, and that it pays no switching charges on any traffic when the complainant uses the Santa Fe as a line-haul carrier. They also show that by using the lines of either defendant the complainant may put its canned goods at all points in a large competitive territory without paying switching charges in addition to the line-haul rate. All this, however, simply minimizes the extent to which the complainant is subjected to rate disadvantages, without justifying the disadvantages to which it is subjected on the balance of its traffic. The defendants also contend that the belt line is neither a corporation nor a person but simply a facility furnished and operated by the state of California in connection with its administration of the water front of San Francisco, which is owned by the state, and that it is therefore to be regarded as constituting merely an extension of the rails of each of the carriers serving that community. The Southern Pacific also asserts that on noncompetitive business it is necessary to absorb the switching charges of the belt line, so that industries on the belt line may be kept on a parity with industries on its own terminals. As the situation is analyzed by the defendants the California Packing Corporation enjoys a more favorable location on the rails of the belt line, because, from a practical point of view, it is served by the Southern Pacific, the Santa Fe, and the Western Pacific, whereas the complainant's plant is reached by the rails of the Santa Fe alone.

We are unable to see any force in these contentions. The belt line is an independently owned and operated terminal railroad, and with respect to traffic moving to and from its rails, in connection with the Southern Pacific as the line-haul carrier, it occupies no other or different relation to the Southern Pacific than does the Santa Fe when the Southern Pacific, as the line-haul carrier, uses the Santa

Fe in order to reach industries on the Santa Fe terminals. The fact that the belt line is owned and operated directly by the state is of no importance. It is a facility of transportation offering its services as a common carrier of state and interstate traffic and in that capacity maintains its own separate carrier existence. The fact that the belt line has no tariffs on file here neither qualifies nor modifies its status as a common carrier of interstate commerce. Its failure to publish its rates and charges is simply a breach of the law which must be corrected.

The complaint is sustained, and upon the record we conclude and find that, so far as interstate traffic is concerned, in the rate conditions shown of record are all the elements of undue preference and undue prejudice under section 3 of the act. The traffic, both inbound and outbound, of the complainant and its principal competitor is similar. The two plants are in the same community and there is nothing of record to suggest that in respect of their interstate traffic the circumstances and conditions of carriage and transportation are in any respect dissimilar. One plant happens to be on the belt line while the other is on the terminals of the Santa Fe. When serving them from or to noncompetitive interstate points no fact or condition is shown of record to justify the Southern Pacific, as the line-haul carrier, in applying the line-haul rate to and from one plant while adding a switching charge, in addition to the line-haul rate, to and from the other plant.

In what has been said we have referred to the conditions described of record and which, presumably, have continued since the taking over of certain carriers of the country by the Director General of Railroads under the so-called federal control act. Among the roads so taken over were the Southern Pacific and the Santa Fe; and by an appropriate amendment the Director General of Railroads has now been made a party to the proceeding and has answered, signifying that he stands upon the present record. It seems necessarily to follow, therefore, and we so conclude and find, that the continuance under federal control of the rate condition of which complaint is made also involves unreasonable and undue prejudice of the rights of the complainant. Moreover, it would appear to be equally clear that, inasmuch as all the railroads under federal control have been unified and coordinated, and by the terms of the federal control act are no longer operated in competition with one another, there is no basis for the distinction, referred to throughout the record, between competitive and noncompetitive traffic, and therefore no basis for imposing different aggregate charges on traffic which prior to federal control fell into one or the other of those classes. See *Kaw River Sand & Material Co. v. A., T. & S. F. Ry. Co.*, 51 I. C. C., 350. More-
51 I. C. C.

over, as the rate of the line-haul carrier takes competitive traffic either to industries on its own San Francisco terminals or, without the addition of a switching charge, to industries on the terminals of the competing line at that point, no reason is apparent, under joint and unified control and operation, for plussing the rate on noncompetitive traffic by a switching charge.

Upon the oral argument the San Francisco Chamber of Commerce was given leave to intervene, and after the argument filed an application for reopening the record and for a further hearing. This, however, seems to be unnecessary in the light of the disposition here made of the controversy between the original parties to the proceeding. The petition for a further hearing will therefore be denied. The fact that the belt line has no team or industry tracks of its own and that the team and industry tracks connected with it were built by the trunk lines on rights of way leased by them from the state and are maintained by the trunk lines, we regard as not having the weight assigned to it by counsel for the intervener. Both the record and the brief filed in behalf of the intervener show that the belt line is a common carrier engaged in the interstate transportation of property.

The complaint embraces a demand for reparation, but no sufficient evidence was adduced of record to justify an award and reparation is therefore denied.

An appropriate order will be entered to give effect to the conclusions herein announced.

51 I. C. C.

No. 9259.

WICHITA TRAFFIC BUREAU

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted May 22, 1917. Decided October 29, 1918.

Rates on news print paper, in carloads, to Wichita, Kans., from Chicago, Ill., and points taking the same rates, and from points in Minnesota, found to have been unreasonable. Reparation awarded.

George H. Fleishman for Wichita Traffic Bureau.

A. E. Helm and *H. O. Caster* for Public Utilities Commission for the state of Kansas, intervener.

T. J. Norton and *R. G. Merrick* for Atchison, Topeka & Santa Fe Railway Company.

W. F. Dickinson and *J. C. LaCoste* for Chicago, Rock Island & Pacific Railway Company and receiver thereof.

H. G. Herbel and *Fred G. Wright* for Missouri Pacific Railway Company and receiver thereof.

Thomas Bond for St. Louis & San Francisco Railroad Company and receivers thereof.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a voluntary association of individuals, firms, and corporations at Wichita, Kans. By complaint, filed October 4, 1916, as amended, it alleges that the commodity rates of 41 cents per 100 pounds on news print paper, in carloads, from International Falls, Cloquet, Grand Rapids, Little Falls, and Sartell, Minn., and 40 cents per 100 pounds, from Chicago, Ill., and points named in agent Boyd's tariff I. C. C. No. A-494, and supplements thereto, as taking the same rates, which include numerous paper-producing points in Wisconsin and Michigan, to Wichita, are unreasonable, unjustly discriminatory, and unduly prejudicial. Reparation is asked on behalf of two newspaper publishers, the Wichita Daily Beacon, a corporation, and the Wichita Eagle, owned jointly by Victor Murdock and Mrs. Paul Eaton, on shipments which moved subsequent to October 15, 1914, and the establishment of reasonable rates for the future. The Public

Utilities Commission for the state of Kansas intervened in behalf of complainant. Rates are stated in cents per 100 pounds.

Wichita is in south central Kansas, 213 miles southwest of Kansas City, Mo. Joint commodity rates apply on news print paper, in carloads, from paper-producing points in Michigan, Wisconsin, and Minnesota to Wichita and Kansas City, the Wisconsin and Michigan points taking the Chicago basis of rates while the rates from the Minnesota points to Wichita are 1 cent higher. In view of this relationship and the fact that complainant's members received all of their news print paper, approximately 100 carloads annually, from International Falls, we will confine our discussion to the rates from the Minnesota points. Rates of 41 cents apply from the Minnesota points to Wichita, and to Kansas City 20 cents except from International Falls, 21 cents. Based on the average short-line distances of 866 miles to Wichita and 653 miles to Kansas City the rates to the former yield ton-mile earnings of 9.47 mills and to the latter approximately 6.2 mills; and, based on an average loading of 55,000 pounds, car-mile earnings of 26 cents and approximately 17 cents, respectively.

For complainant it is contended that the rates to Wichita should not exceed rates that would produce the same ton-mile earnings as the rates to Kansas City. In support of this contention *Phoenix Printing Co. v. M., K. & T. Ry. Co.*, 31 I. C. C., 289, is cited. In that case we prescribed rates on news print paper from the points of origin here considered to Muskogee, Okla., based on the ton-mile earnings under the applicable rates from the same points of origin to Joplin, Mo., which resulted in a rate of 35 cents from International Falls for a distance of 1,056 miles. This case, however, has been reopened at defendants' request, and the parties have agreed by stipulation upon the establishment of a rate of 40 cents.

Complainants rely in large measure on the comparison with the rates to Kansas City, and introduced evidence in support of the contention that transportation conditions in eastern Kansas were not so materially different from those east of the Missouri River as to warrant the disparity between the rates to Kansas City and to Wichita. It is contended for defendants that the rates to Kansas City are upon a very low basis, due to rail and potential water competition between the Mississippi and Missouri rivers, traffic density, and other favorable transportation conditions, and therefore that they do not constitute a proper measure of the rates to Wichita.

In *State of Kansas v. A., T. & S. F. Ry. Co.*, 27 I. C. C., 673, and other cases, we discussed in detail the conditions which tend to produce lower rates east of the Missouri River than west thereof. In the case last cited we prescribed maximum class rates somewhat

lower than those formerly in effect to numerous jobbing points in interior Kansas, including Wichita, from Mississippi River crossings, and suggested that defendants line up their commodity rates, including those on news print paper, in proper relationship to the class rates therein prescribed. News print paper is rated fifth class. The fifth-class rate was reduced from 55 cents to 51 cents. Subsequent to the hearing a conference was had between the Commission and the parties in interest, at which it developed that certain of the commodities listed in the petition were not really important to the points represented. After this conference we advised the carriers that the making of certain reductions in the rates on various specified articles, in which news print paper was not included, would be regarded as a satisfactory compliance with our report and conclusions in that case. Reference was also made for defendants to rates from paper-producing points in Minnesota to points in Oklahoma; also to *Colorado Mfrs. Asso. v. A., T. & S. F. Ry. Co.*, 29 I. C. C., 544. We there prescribed a rate of 53 cents on news print paper from Chicago to Denver, Colo., 1,018 miles, which yields ton-mile earnings of 10.41 mills.

The average distance from the Minnesota points to Wichita is 32.6 per cent greater than the average distance to Kansas City; the rate to Wichita exceeds the rates to Kansas City from International Falls by 95 per cent and from the other Minnesota points by 105 per cent. Defendants maintain rates of 32 cents from the Minnesota points to Joplin, Mo., and Parsons, Kans., for average distances of 808 miles and 790 miles, respectively. The average distances to Joplin and Parsons are 23.7 per cent and 21 per cent, respectively, greater than the average distance to Kansas City; the rates to these points are 52 per cent higher than the rate from International Falls and 60 per cent greater than the rates from the other Minnesota points to Kansas City. The rate to Topeka, Kans., for an average distance of 720 miles, is 26 cents. The distance from the Minnesota points to Topeka is 10.3 per cent greater than to Kansas City; the rates to Topeka are 24 per cent higher than the rate from International Falls and 30 per cent higher than the rates from the other Minnesota points to Kansas City.

We find that the rates assailed were unreasonable to the extent that they exceeded 36 cents per 100 pounds from Chicago and points taking the same rates, and 37 cents per 100 pounds from International Falls, Cloquet, Grand Rapids, Little Falls, and Sartell. We further find that the Wichita Daily Beacon and Victor Murdock and Mrs. Paul Eaton, trading as the Wichita Eagle, made shipments and paid and bore the charges thereon at the rates herein found unreasonable; that they have been damaged to the extent of the difference between

the charges paid and those that would have accrued at the rates herein found reasonable; and that they are entitled to reparation, with interest, on all shipments delivered subsequent to October 15, 1915. The exact amount of reparation due can not be determined on this record, and the parties named should prepare statements showing the details of the shipments in accordance with rule V of the Rules of Practice, which statements should be submitted to defendants for verification. Upon receipt of statements so prepared and verified, we will consider the entry of an order awarding reparation.

The Director General, in exercise of powers conferred upon the President by the federal control act; has initiated rates which exceed those assailed. The increased rates have not been brought into issue and the Director General has not been made a party defendant. No order for the future can be entered upon the present pleadings.

HARLAN, *Commissioner*, dissents.

51 I. C. C.

No. 9321.

HOUSTON EXPORTERS ASSOCIATION

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted December 4, 1918. Decided December 9, 1918.

Rates legally applicable on bagging, in carloads, from points in Oklahoma to destinations in Texas found to have been unreasonable. Reparation awarded.

Huggins & Kayser, J. A. Morgan, and F. A. Lallier for complainant.

Robert Dunlap, T. J. Norton, W. F. Dickinson, C. S. Burg, Baker, Botts, Parker & Garwood, and F. E. Andrews for defendants; *L. M. Hogsett* for International & Great Northern Railway Company and its receiver; *M. J. Dowlin* for Chicago, Rock Island & Pacific Railway Company and its receiver, and Chicago, Rock Island & Gulf Railway Company; *Gentry Waldo* for Galveston, Harrisburg & San Antonio Railway Company; *J. F. Garvin* for Missouri, Kansas & Texas Railway Company, and Missouri, Kansas & Texas Railway Company of Texas and their receiver; and *J. C. Manghan* for San Antonio & Aransas Pass Railway Company.

R. Walton Moore for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HARLAN, AND HALL.

BY DIVISION 3:

Complainant is an incorporated association of dealers in cotton, with its office at Houston, Tex. In the complaint filed November 21, 1916, it alleges that the rates charged on 10 carloads of new jute bagging, in bales, shipped from points in Oklahoma to destinations in Texas, were unreasonable, and asks for reparation only. By supplemental complaint filed on September 24, 1918, with our permission the Director General was made a party defendant. The answer thereto of the Director General denies that complainant is entitled to relief and prays that the original complaint and supplemental complaint be dismissed. No further hearing was asked or had. Rates are stated in cents per 100 pounds.

The bagging originated at Galveston, Tex., and was shipped to Oklahoma for use by members of the complainant corporation. They could not use the bagging, and it was reshipped over defendants' lines to the Texas destinations under consideration. No commodity rates were in effect. The exceptions to the western classification, which governed, rated and rate jute bagging, in bales, minimum 30,000 pounds, fifth class. The record shows that the shipments consisted of cotton bale covering. Essential details relative thereto are shown in the table on page 512.

In support of the contention that the rates applicable were unreasonable, complainant relies principally on *Corporation Commission of Oklahoma v. A. O. & W. R. R. Co.*, 27 I. C. C., 210, decided June 3, 1913, wherein we prescribed a distance scale of rates on burlap bagging, cotton-bale ties, and tie buckles, in straight or mixed carloads, from Galveston to Oklahoma points. Subsequently this scale was voluntarily established by the carriers for application from Houston, Tex. Following the expiration of our order in that case, the carriers canceled the distance scale and reestablished rates from Galveston and Houston to Oklahoma points 2 cents higher than the rates applicable under the prescribed scale. For example, we prescribed a rate of 30 cents, plus a differential of 2 cents for joint rates, for 550 miles and over 500 miles. A 30-cent rate would yield approximately 11.6 mills per ton-mile for 518 miles, the distance from Purcell to Galveston by way of the Gulf, Colorado & Santa Fe Railway, and, based on 30,000 pounds, 17.4 cents per car-mile. The 57-cent rate charged on one of the shipments from Purcell to Galveston over the route of movement yielded 2.2 cents per ton-mile and 33 cents per car-mile.

Complainant cites a rate of 24 cents on bagging and ties from Shreveport, La., to Texas common points, prescribed in *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 41 I. C. C., 83, 117, and commodity rates, lower than the rates assailed and for materially greater distances, on bagging from St. Louis, Mo., and Memphis, Tenn., to the destinations in controversy.

Class rates between Texas and Oklahoma points are the same in both directions. Commodity rates apply on a considerable number of commodities from Galveston into Oklahoma, which are lower than the rates applicable on the same traffic in the opposite direction.

We find that the rates legally applicable were unreasonable to the extent that they exceeded over the routes of movement: 28 cents per 100 pounds from Ardmore to Houston; 30 cents per 100 pounds from Waurika to Lockhart; 32 cents per 100 pounds from Ada and Chickasha to Houston, Weleetka to Navasota, and from Purcell to Galveston; 34 cents per 100 pounds from Cushing to Houston; and 36 cents

per 100 pounds from McAlester to Cuero, Muskogee to Yoakum, and from Oklahoma City to Kenedy in connection with a carload minimum weight of 24,000 pounds.

We further find that complainant made the above described shipments and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rates herein found reasonable; and that it is entitled to reparation in the sum of \$166.82, with interest, from the Gulf, Colorado & Santa Fe Railway Company; in the sum of \$117.77, with interest, from the Chicago, Rock Island & Pacific Railway Company and its receiver, the Chicago, Rock Island & Gulf Railway Company, and the Missouri, Kansas & Texas Railway Company of Texas and its receiver; in the sum of \$69.60, with interest, from the Missouri, Kansas & Texas Railway Company and its receiver, and the Missouri, Kansas & Texas Railway Company of Texas and its receiver; in the sum of \$62.50, with interest, from the Chicago, Rock Island & Pacific Railway Company and its receiver, the Chicago, Rock Island & Gulf Railway Company and the International & Great Northern Railway Company and its receiver; in the sum of \$87.96, with interest, from the St. Louis-San Francisco Railway Company, St. Louis, San Francisco & Texas Railway Company, and Gulf, Colorado & Santa Fe Railway Company; in the sum of \$91.86, with interest, from the Missouri, Kansas & Texas Railway Company, and its receiver, the Missouri, Kansas & Texas Railway Company of Texas and its receiver, and the Galveston, Harrisburg & San Antonio Railway Company; in the sum of \$114.69 with interest, from the St. Louis-San Francisco Railway Company, St. Louis, San Francisco & Texas Railway Company, International & Great Northern Railway Company and its receiver, and San Antonio & Aransas Pass Railway Company; in the sum of \$105.14, with interest, from the Atchison, Topeka & Santa Fe Railway Company, and Gulf, Colorado & Santa Fe Railway Company; and in the sum of \$97.78, with interest, from the Missouri, Kansas & Texas Railway Company and its receiver, the Missouri, Kansas & Texas Railway Company of Texas and its receiver, and San Antonio & Aransas Pass Railway Company. Collection of the undercharges may be waived.

The rates now in effect were initiated by the Director General and have not been complained of. There is here no prayer for the establishment of rates for the future and no record upon which such a finding could be based.

An order awarding reparation will be entered.

51 L. Q. C.

Dates.	Points of origin in Oklahoma.	Destinations in Texas.	Routes of movement.	Distances.		Weight.		Charges collected.		Fifth-class rate applicable.	Over charges.	Under-charges.	Revenue based on short-line distance.
				Over routes of movement.	Short-line.	Actual.	Basis of charges.	Rate.	Amount.				Per ton-mile.
1916 Sept. 9	Weleetka.....	Navasota.....	St. L. & S. F.; St. L., S. F. & T.; G. C. & S. F.	Miles. 480	Miles. 393	Pounds. 29,700	Pounds. 30,000	Cents. 61	\$183.00	Cents. 54	\$21.00	.....	Cents. 2.75 41.2
8	McAlester.....	Chero.....	M., K. & T.; M., K. & T. of T.; G. H. & S. A.	554	450	28,650	30,000	65	195 00	56	27.00	.....	2.49 37.4
16	Oklahoma City..	Kenedy.....	M., K. & T.; M., K. & T. of T.; S. A. & A. P.	598	522	27,282	40,000	49	196 40	65	1.00	.....	2.49 37.4
13	Waurika.....	Lockhart.....	C., R. I. & P.; C., R. I. & G.; M., K. & T. of T.	357	357	24,342	36,000	53	190 30	53	31.80	.....	2.97 44.5
14	Ada.....	Houston.....	M., K. & T.; M., K. & T. of T.	522	403	27,000	30,000	52	156 00	52	.....	.....	2.58 38 7
13	Chickasha.....	do.....	C., R. I. & P.; C., R. I. & G.; I. & G. N.	472	435	25,009	25,000	57	142 50	56	.....	\$25.50	2.57 36.6
8	Ardmore.....	do.....	Q., C. & S. F.	446	364	28,160	30,000	52	156 00	50	6.00	.....	2.75 41.2
12	Cushing.....	do.....	A., T. & S. F.; G. C. & S. F.	590	507	29,076	30,000	68	204 00	68	.....	.....	2.68 40.2
12	Muskogee.....	Yoakum.....	St. L. & S. F.; St. L., S. F. & T.; I. & G. N.; S. A. & A. P.	574	495	31,860	31,860	72	229 39	72	.....	.....	2.91 46.3
8	Purcell.....	Galveston...	G. C. & S. F.	518	480	25,416	30,000	57	171.00	57	.....	.....	2.38 35.6

No. 9955.

ÆTNA EXPLOSIVES COMPANY

v.

**ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.**

Submitted October 30, 1918. Decided December 5, 1918.

Rate charged on three carloads of sulphuric acid from Argentine, Kans., to Ishpeming, Mich., found to have been unreasonable to the extent that it exceeded the aggregate of intermediate rates contemporaneously in effect over the route of movement. Reparation awarded.

George G. Reynolds for complainants.

R. Walton Moore for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HARLAN, AND HALL.

BY DIVISION 3:

Complainants are George C. Holt and Benjamin B. Odell, receivers of the Ætna Explosives Company, a corporation formerly engaged in the manufacture of explosives at New York, N. Y. By complaint filed October 31, 1917, as amended, they allege that the rate charged on three carloads of sulphuric acid shipped in July, 1916, from Argentine, Kans., to Ishpeming, Mich., was unreasonable to the extent that it exceeded the aggregate of the intermediate rates. They ask reparation and the establishment of a reasonable rate. By supplemental complaint filed on October 1, 1918, with our permission, the Director General was made a party defendant, and the complainant consented to the increase as provided in General Order No. 28 of the rate for the future prayed in its original complaint. The answer thereto of the Director General denies that complainant is entitled to relief and prays that the original complaint and supplemental complaint be dismissed. No further hearing was asked or had. Rates are stated in cents per 100 pounds.

The shipments, aggregating 196,600 pounds, moved over the Atchison, Topeka & Santa Fe Railway, hereinafter called the Santa Fe, to Chicago, Ill., and beyond over the Chicago & North Western Railway. Charges were collected in the sum of \$707.75 at the joint rate of 36 cents, legally applicable. When the shipments moved the aggregate of the intermediate rates was 30 cents, composed of commodity rates of 15 cents to Chicago and 15 cents beyond. This

departure from the provisions of the fourth section was protected by an appropriate fourth section application. Effective September 16, 1917, the component from Argentine to Chicago was increased to 20 cents. On April 1, 1918, a joint rate of 35 cents was established over the route of movement from Argentine to Ishpeming, removing the fourth section departure. This rate, which remained in effect until June 25, 1918, when it was increased pursuant to General Order 28 of the Director General of Railroads, also applied by way of the Sante Fe in connection with the Chicago, Burlington & Quincy Railroad to Ladd or Spring Valley, Ill., or in connection with the Chicago, Milwaukee & St. Paul Railway to Ladd, and thence by way of the Chicago & North Western to Ishpeming.

Complainants ask that a joint rate of 32½ cents, which was the aggregate of the intermediate rates in effect prior to June 25, 1918, to and from Ladd or Spring Valley, be established over the route of movement. The fact that a lower combination can be made by way of another route would not be sufficient to justify us in prescribing that rate over the route of movement.

We find that the rate charged was unreasonable to the extent that it exceeded the aggregate of the intermediate rates contemporaneously in effect to and from Chicago. We further find that the *Ætna Explosives Company* made the shipments as described and paid and bore the charges thereon; and that it has been damaged to the extent that the charges paid exceeded those that would have accrued at the rate herein found reasonable; and that complainants are entitled to reparation in the sum of \$117.95, with interest.

An order awarding reparation will be entered. As the present rates conform to the fourth section, there is no occasion for an order for the future.

51 L. C. C.

No. 10061.
HOLGATE BROTHERS COMPANY
v.
PENNSYLVANIA RAILROAD COMPANY ET AL

Submitted April 10, 1918. Decided October 29, 1918.

Rail-and-water rate charged on brush blocks, in less than carloads, from Kane, Pa., to Boston, Mass., through Baltimore, Md., found to have been legally applicable and not shown to have been unreasonable or unduly prejudicial. Complaint dismissed.

O. M. Rogers for complainant.

William J. Pitt for Merchants & Miners Transportation Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

It is alleged herein, by complaint seasonably filed, that the rail-and-water rate charged by the defendants on brush blocks, in less than carloads, shipped from Kane, Pa., through Baltimore, Md., to Boston, Mass., between February, 1916, and March, 1917, was illegal, unreasonable, and unduly prejudicial. Reparation and the establishment of a reasonable joint rate are asked. Rates are stated in cents per 100 pounds.

The shipments moved as routed by the complainant over the Pennsylvania Railroad to Baltimore and the line of the Merchants & Miners Transportation Company, hereinafter called the Merchants & Miners, beyond, approximately 1,065 miles. Charges were assessed on some of the shipments at the legally applicable combination rate of 49.7 cents, composed of rates of 22.8 cents to Baltimore and 26.9 cents beyond, governed by rule 26 of the official classification, which is 20 per cent less than third class, but not less than fourth class. Apparently some of the shipments on which a rate of 49.6 cents is stated to have been assessed were undercharged.

There was contemporaneously in effect by way of defendants' lines through Philadelphia, Pa., a distance of about 897 miles, a joint commodity rail-and-water rate of 25.6 cents. The complainant's shipments to Boston formerly moved over this route. It was testified that, due to the fact that on February 5, 1916, the Merchants & Miners embargoed all freight from connecting lines on its Philadelphia-Boston line northbound, which embargo is said to have been

in effect during the period of movement, this route was not open. It is urged that, under a rule in the governing tariffs providing that in cases where the carriers, for their own convenience, route shipments via junction points other than those specified by the shipper, the joint rate via Philadelphia was legally applicable. As the shipments moved in compliance with the complainant's specific instructions, this contention is untenable.

The complainant's principal contention is that the combination rate charged was unreasonable to the extent that it exceeded the joint rate through Philadelphia. It cites joint rail-and-water rates ranging from 23.5 to 30 cents on brush blocks, in less than carloads, from Parkersburg and Clarksburg, W. Va., and from Foxburg, Pa., and other points north of Pittsburgh, Pa., to Boston, applicable over the Baltimore & Ohio Railroad to Baltimore and the Merchants & Miners beyond, the distances to Baltimore from these points being greater than from Kane. A brush-block factory is located at Parkersburg, but it does not compete with complainant at Boston.

It was stated for the Merchants & Miners, the only defendant represented at the hearing, that the joint rate via Philadelphia, established many years ago, was unremunerative; that its rate from Baltimore to Boston was practically the same or slightly less than the all-rail rate contemporaneously in effect from and to these points; that the Baltimore-Boston service was withdrawn March 20, 1917, due to the shortage of labor, difficulty in coaling, and inability to operate at a profit, its operations for the year 1917 having resulted in a deficit of \$394,422.89.

Reference was made to *The Fifteen Per Cent Case*, 45 I. C. C., 803, and *Prudential Oil Corporation v. Transportation Co.*, 43 I. C. C., 696, in which the difficulties and increased expenses incident to the operation of coastwise lines were adverted to. The following water rates, subject to rule 26, were cited: Boston to Eastport, Me., 33 cents, 272 miles; Boston to Bangor, Me., 29.5 cents, 247 miles; New York to Norfolk, Va., 32 cents, 325 miles; New York to Charleston, S. C., and to Savannah, Ga., 42.5 cents, 722 and 806 miles, respectively; Norfolk to Boston, 28.5 cents, 594 miles. The joint rail-and-water rate from Kane through Philadelphia to Boston, upon basis of which reparation is asked, is less than the local water rate from Baltimore to Boston, and, if published via Baltimore, would create a violation of the long-and-short-haul provision of the fourth section of the act.

It was explained on behalf of the Merchants & Miners that its joint rates with the Baltimore & Ohio from points south of Pittsburgh, including Parkersburg, were established many years ago; that the joint rates from Foxburg and points north of Pittsburgh were published under proper concurrences but in opposition to its expressed

wishes, January 26, 1917, about two months before its service between Baltimore and Boston was discontinued; and that its rates in connection with the Baltimore & Ohio do not afford a fair basis of comparison for the reason that it has terminal connections with the Baltimore & Ohio at Baltimore, whereas an expensive lighterage service was usually necessary in transferring freight from the Pennsylvania terminals to its steamers. Publication of joint rates to Boston through Baltimore over the Pennsylvania in connection with the Merchants & Miners has never been encouraged, apparently on the assumption that the Merchants & Miners could not expect traffic for transportation over this route from the territory in which Kane is situated.

We find that the rate assailed is not shown to have been unreasonable or unduly prejudicial. Since this case was submitted, the Director General, in the exercise of powers conferred upon the President by the federal control act, has initiated rates higher than those assailed. The increased rates have not been brought into issue and the Director General has not been made a party defendant. In the present state of the pleadings no order for the future can be entered. The complaint will be dismissed.

51 L. C. C.

No. 9407.

B. JOHNSON & SON

v.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY ET AL.

Submitted May 7, 1917. Decided October 29, 1918.

Rate legally applicable on ties, in carloads, from Pocahontas and Elnora, Ark., to Cairo, Ill., and from Pocahontas and Black Rock, Ark., to Thebes, Ill., found to have been unreasonable. Reparation awarded.

John L. Rupe for complainants.

Thomas Bond for St. Louis-San Francisco Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainants are Benjamin Johnson and John H. Johnson, co-partners, engaged in the railway tie and lumber business at Richmond, Ind., under the name of B. Johnson & Son. In their complaint, filed August 21, 1916, as amended, they allege that the rate of 11 cents per 100 pounds charged by defendants on 24 carloads of railroad ties, 22 of which were shipped from Pocahontas and Elnora, Ark., to Cairo, Ill., 1 from Pocahontas to Thebes, Ill., and 1 from Black Rock, Ark., to Thebes, between January 18 and June 16, 1916, inclusive, was unreasonable to the extent that it exceeded 10 cents. Reparation is asked. Rates are stated in cents per 100 pounds.

Elnora, Pocahontas, and Black Rock are local points on the St. Louis-San Francisco Railway, hereinafter termed the Frisco, the only carrier represented at the hearing. While only the rates charged to Cairo and Thebes are assailed, it appears that the ties were purchased and shipped by complainant to fulfill a contract with the New York Central Railroad, which provided for delivery at those points; but the shipments were billed through from points of origin to ultimate destinations. Twenty-two were consigned to the New York Central Railroad Company at Air Line Junction, Ohio, and were routed by way of Cairo, the Cleveland, Cincinnati, Chicago & St. Louis Railway to Danville, Ill., and the New York Central beyond. The remaining two were consigned to the Michigan Central Railroad at Michigan City, Ind., and were routed by way of Thebes, the Chicago & Eastern Illinois Railroad to Chicago Heights,

Ill., and the Michigan Central beyond. Charges were collected, except on one shipment, at a rate of 11 cents applicable to Thebes and Cairo. On the excepted shipment charges were assessed on a weight of 80,000 pounds at a rate of 10 cents. The legal rate was 11 cents, and it appears from the freight bill that the shipment weighed 68,400 pounds. If this is the correct weight, the shipment was overcharged \$4.76.

No direct evidence was offered as to the charges assessed by the carriers transporting the shipments beyond Cairo and Thebes. The freight bills offered in evidence indicate that joint rates were applied beyond said points, out of which joint rates the carriers transporting the shipments from Cairo or Thebes obtained their agreed divisions to points of interchange with the purchasing carriers and the purchasing carriers credited themselves with their own divisions of the same rates.

Ties take the rate on lumber. For some time prior to October 3, 1914, the Frisco published a 10-cent rate on lumber and articles taking the same rate from these points of origin to Thebes and from Pocahontas and Elnora to Cairo. On that date it proposed to increase the rates 1 cent per 100 pounds, but the tariffs containing these increased rates were suspended. In *Rates on Lumber from Southern Points*, 34 I. C. C., 652, decided July 12, 1915, we found that these increased rates, among others, had not been justified. Effective November 22, 1915, the Frisco republished the 11-cent rate from and to these points and this rate remained in effect until increased on June 25, 1918, under General Order No. 28 of the Director General of Railroads.

The complainants show that a rate of 10 cents was contemporaneously applicable on ties over the St. Louis, Iron Mountain & Southern Railway from Walnut Ridge, Hoxie, and Nettleton, Ark., to Thebes and Cairo, and over the St. Louis Southwestern Railway from Jonesboro, Ark., to Thebes and Cairo. Walnut Ridge and Hoxie are on the Frisco, a short distance south of, and on the same division as, Pocahontas and Elnora. Nettleton and Jonesboro are on the Frisco southeast of Pocahontas and Elnora.

For the Frisco it was stated that most of its rates from this territory to Cairo are higher than to Thebes because the latter point is its gateway on traffic east of the Mississippi River. It contends, however, that the 11-cent rate assailed is not unreasonable for any of the traffic in question. It was also pointed out that the 10-cent rate over the lines of the St. Louis, Iron Mountain & Southern and St. Louis Southwestern from Walnut Ridge, Hoxie, Jonesboro, and Nettleton to Thebes and Cairo applies over one line whereas the rates assailed apply over three lines.

The table below shows the distances from and to the points named and the ton-mile earnings under the 10 and 11 cent rates:

From—	To—	Miles.	Rate.	Ton-mile earnings.	Rate.	Ton-mile earnings.
			Cents.	Mills.	Cents.	Mills.
Pocahontas.....	Cairo.....	149	11	14.8	10	13.4
Elnora.....	do.....	156	11	14.2	10	12.8
Pocahontas.....	Thebes.....	126	11	17.5	10	15.9
Black Rock.....	do.....	149	11	14.8	10	13.4

In justification of the rates assailed the Frisco introduced two exhibits showing the rates from certain points in Arkansas to Memphis, Tenn., most of which were approved in *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.*, 39 I. C. C., 303. These rates, ranging from 9 to 14 cents, produce ton-mile earnings of from 12.5 to 16.3 mills for distances of from 126 to 224 miles.

In *Rates on Lumber from Southern Points*, *supra*, we considered the increased rates in question on a very complete record and found that they had not been justified. There is nothing in the present record to warrant a different conclusion.

We find that the defendants have not sustained the burden of justifying the rates assailed and that they were unreasonable to the extent that they exceeded 10 cents per 100 pounds.

The Frisco contends that even if these rates are found to be unreasonable the complainants are not entitled to reparation, as the shipments were through shipments to Air Line Junction and Michigan City, and the through rates are not attacked, citing *Stevens Grocer Co. v. St. L., I. M. & S. Ry. Co.*, 42 I. C. C., 396. As a practical proposition the principles announced in that case can not be applied here.

As above indicated the shipments were sold f. o. b. Cairo or Thebes. There were no joint rates from point of origin to ultimate destination. Charges were collected from the shipper on basis of the rates to either Cairo or Thebes. Beyond these points, the shipper was not concerned with the rate. Its contract with the purchasing carrier was fulfilled upon delivery of the shipments to the designated carriers at these points. For these reasons we are of the opinion that we may properly award reparation on the rates which are found unreasonable. We further find that complainants made the shipments as described and paid and bore the charges thereon; that they have been damaged to the extent of the difference between the charges paid and those that would have accrued at the rates herein found reasonable; and that they are entitled to reparation, with interest.

The exact amount of reparation due can not be determined on this record, and complainants should prepare a statement showing the

details of the shipments in accordance with rule V of the Rules of Practice, also specifying the date on which the charges were paid, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation. There should be included in this statement any outstanding overcharges.

No. 9979.

DAVID KAUFMAN & SONS COMPANY

v.

CENTRAL RAILROAD COMPANY OF NEW JERSEY ET AL.

Submitted February 25, 1918. Decided October 29, 1918.

Rate on scrap iron, in carloads, from Elizabethport and Bayway, N. J., to Sharon, Pa., not shown to have been unreasonable. Complaint dismissed.

Louis Kaufman for complainant.

A. H. Elder for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

The rate of \$3.52 per long ton charged by the defendants on certain carloads of scrap iron, shipped from Elizabethport and Bayway, N. J., to Sharon, Pa., in August, 1917, is assailed herein, by complaint seasonably filed, as unreasonable to the extent that it exceeded the rate of \$2.76 contemporaneously applicable to Pittsburgh, Pa. Reparation and the establishment of a reasonable rate are asked. Rates are stated in amounts per long ton unless otherwise noted.

The shipments moved over the defendants' lines, 542 miles from Elizabethport and 545 miles from Bayway. Charges were collected at the legally applicable rate of \$3.52.

Practically the only evidence of any probative value offered by the complainant was a comparison of the rate assailed with a rate of \$2.76 to Pittsburgh and other points taking the same rates. Sharon is 69 miles northwest of Pittsburgh.

Class and commodity rates from Elizabethport and Bayway, New York, N. Y., rate points, to Sharon are on the New York-Chicago percentage basis, Sharon being in the 67 per cent group. The rate assailed was 67 per cent of \$5.26, the rate on scrap iron from New York to Chicago. The official classification, which governs, rates scrap iron sixth class. The sixth-class rate from New York to Chicago was 30 cents per 100 pounds. Pittsburgh is in the 60 per cent group and ordinarily takes 60 per cent of the New York-Chicago rates, but on scrap iron a commodity rate lower than 60 per cent of the New York-Chicago rate on scrap iron was established due, as defendants explained, to the necessity for meeting competition between New York and Buffalo. The defendants insist that if Sharon were taken out of the 67 per cent group and given the Pittsburgh rates there could be no justification for refusing similar treatment to other points in the same group with respect to both class and commodity rates.

In our opinion this record affords no basis for condemning the making of rates on scrap iron from and to the points in question on the basis of 67 per cent of the New York-Chicago rates, and we find that the rate assailed is not shown to have been unreasonable. The defendants' explanation for according Pittsburgh rates on scrap iron lower than 60 per cent of the New York-Chicago rate is not convincing, but no undue prejudice is alleged.

An order dismissing the complaint will be entered.

51 I. C. C.

No. 10037.

YOUNG GRAIN COMPANY

v.

TOLEDO, ST. LOUIS & WESTERN RAILROAD COMPANY,
ET AL.

Submitted May 23, 1918. Decided October 29, 1918.

Rates on corn, in carloads, from certain points in Indiana to named destinations in Canada found to have been unreasonable to the extent that they exceeded the aggregates of the intermediate rates contemporaneously in effect to and from Detroit, Mich. Reparation awarded.

H. G. Wilson for complainant.

J. W. Graham for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

The complainant, a corporation engaged in the grain and seed business at Toledo, Ohio, alleges by complaint filed January 18, 1918, that the rates charged by the defendants on three carloads of corn, shipped October 31 and November 2 and 22, 1916, from Mellott, New Richmond, and Middletons, Ind., to Toledo, there stored and subsequently reshipped to Ripley, Atwood, and Goderich, Canada, were unreasonable to the extent that they exceeded the aggregates of the intermediate rates contemporaneously in effect. Reparation and the establishment of reasonable rates are asked. Rates are stated in cents per 100 pounds.

The shipments, aggregating 168,000 pounds, moved over the Toledo, St. Louis and Western Railroad to Toledo where they were stored and subsequently forwarded, under proper tariff authority, over the Detroit & Toledo Shore Line Railroad to Detroit, Mich., and beyond over the Grand Trunk Railway of Canada. Charges were collected in the sum of \$329.84, based on the applicable joint sixth-class rates of 20.8 cents from Mellott and New Richmond to Ripley, 19.8 cents from Mellott to Atwood, and 18.3 cents from Middletons to Goderich. There were contemporaneously in effect over the routes of movement the following combination commodity rates on corn under which storage in transit was permitted at Toledo: From Mellott and New Richmond to Ripley, 17.4 cents, made up of 8.4 cents to Detroit and 9 cents beyond; from Mellott to Atwood,

17.4 cents, composed of 8.4 cents to Detroit and 9 cents beyond; and from Middletons to Goderich, 15.9 cents, made up of 7.9 cents to Detroit and 8 cents beyond.

We find that the rates assailed were unreasonable to the extent that they exceeded the aggregates of the intermediate rates contemporaneously in effect to and from Detroit; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent that the charges paid exceeded those that would have accrued at the rates herein found reasonable; and that it is entitled to reparation in the sum of \$45.92, with interest.

An order awarding reparation will be entered. The Director General, in exercise of powers conferred upon the President by the federal control act, has initiated rates which exceed those assailed. The increased rates have not been brought into issue and the Director General has not been made a party defendant. No order for the future can be entered upon the present pleadings.

51 I. C. C.

No. 10055.
INDEPENDENT BRIDGE COMPANY
v.
PENNSYLVANIA RAILROAD COMPANY ET AL.

Submitted May 29, 1918. Decided October 29, 1918.

Rate on wrought-iron annealing boxes, in carloads, from Allegheny, Pa., to Weirton, W. Va., found to have been unreasonable and unduly prejudicial. Reparation awarded.

O. M. Rogers for complainant.

James Stillwell for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant is a corporation engaged in the manufacture of wrought-iron annealing boxes at Pittsburgh, Pa. By complaint filed February 6, 1918, as amended, it alleges that the rate of 7.9 cents per 100 pounds charged by defendants on 25 carloads of welded and unriveted wrought-iron annealing boxes, shipped between February 22, 1916, and March 14, 1917, inclusive, from Allegheny, Pa., to Weirton, W. Va., was unreasonable and unduly prejudicial to the extent that it exceeded a rate of 4.2 cents per 100 pounds contemporaneously in effect on cast-iron annealing boxes from and to the same points. Reparation and the establishment of a reasonable rate are asked. Rates are stated in cents per 100 pounds.

The shipments, aggregating 1,025,257 pounds, moved over the defendants' lines, and charges were collected in the sum of \$809.93 at the fifth-class rate of 7.9 cents, minimum 30,000 pounds, governed by the official classification.

There was contemporaneously in effect from and to the same points a commodity rate of 4.2 cents on iron and steel articles, including cast-iron annealing boxes. On May 6, 1918, the defendants established a like rate on wrought-iron annealing boxes, welded, not riveted. These rates were increased to 5 cents on May 20, 1918, following our supplemental order in *The Fifteen Per Cent Case*, 45 I. C. C., 303. Wrought-iron and cast-iron annealing boxes are of about the same size, weight, and value; are used for the same purpose; are sold in competition with each other; and move under substantially similar circumstances and conditions. The defendants admit that these boxes

should take the same rates; that the rate assailed was unreasonable to the extent that it exceeded the rate on cast-iron annealing boxes; and expressed willingness to make reparation upon that basis.

We find that the rate assailed was unreasonable and unduly prejudicial to the extent that it exceeded the rate contemporaneously maintained on cast-iron annealing boxes; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$379.32, with interest.

The Director General, in exercise of powers conferred upon the President by the federal control act, has initiated rates which exceed those assailed. The increased rates have not been brought into issue and the Director General has not been made a party defendant. No order for the future can be entered upon the present pleadings.

An order awarding reparation will be entered.

51 I. C. C.

No. 10072.

AMERICAN STEEL EXPORT COMPANY
v.
SOUTHERN RAILWAY COMPANY ET AL.

Submitted April 18, 1918. Decided March 7, 1919.

Rate on wire rods in coils, in carloads, from Atlanta, Ga., to Baltimore, Md., found to have been unlawful and unreasonable. Reparation awarded.

C. S. Belsterling for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND AITCHISON.

BY DIVISION 3:

Complainant, a corporation dealing in steel products at New York, N. Y., alleges by complaint seasonably filed that the charges collected on 11 carloads of wire rods in coils shipped from Atlanta, Ga., to Baltimore, Md., between January 6 and 10, 1916, intended for export, were unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of the fourth section. Reparation is asked. Rates are stated in cents per 100 pounds unless otherwise specified.

The shipments, aggregating 671,940 pounds, moved over the Southern Railway to Norfolk, Va., and thence by way of the Chesapeake Steamship Company to Baltimore. Charges were collected in the sum of \$2,418.97, based on a commodity rate of 36 cents, minimum 30,000 pounds, legally applicable. The defendants contemporaneously maintained a rate of \$3.60 per long ton on steel billets from and to these points. Previous to forwarding the shipment the complainant requested the same rate on wire rods in coils and the defendants agreed to establish it, but were unable to do so in time for the shipments to reach Baltimore before the departure of the vessel on which space had been engaged. On January 19, 1916, while the shipments were en route, the defendants established a rate of \$3.60 per long ton, minimum 44,800 pounds, on this traffic from Atlanta to Baltimore. On November 10, 1917, this rate as well as the rate on billets was increased to \$4.60 per long ton. Complainant contends that the rate charged was unreasonable to the extent that it exceeded \$3.60 per long ton.

At the time of movement the defendants maintained a rate of \$3.85 per long ton, minimum 44,800 pounds, on iron and steel articles, including billets and wire rods, from Birmingham and Anniston, Ala., to Baltimore, to which Atlanta is intermediate. This departure from the long-and-short-haul rule of the fourth section was protected by an appropriate application, which was not heard with this case. At the same time there was in effect from Atlanta to Baltimore over the route of movement a combination rate of 30.7 cents, composed of rates of 20 cents, minimum 30,000 pounds, from Atlanta to Norfolk, and 10.7 cents, minimum 30,000 pounds, beyond. This departure from the provision of the fourth section prohibiting the charging of a higher rate for the through movement than the aggregate of the intermediate rates was not protected and the rate charged was therefore unlawful. The subsequent reduction of the rate from Atlanta to Baltimore removed the fourth section departures mentioned. Complainant shows that the wire rods in coils and steel billets are generally accorded the same rates not only in southern classification territory, but also in central freight association and trunk line territories.

We find that the rate charged was unreasonable to the extent that it exceeded the rate of \$3.60 per long ton contemporaneously in effect on steel billets, in carloads, from and to the same points. We further find that the complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found reasonable, and that it is entitled to reparation in the sum of \$1,339.08, with interest.

An appropriate order will be entered.

51 L. C. C.

No. 9313.
ALGOMA LUMBER COMPANY
v.
SOUTHERN PACIFIC COMPANY.

Submitted October 22, 1918. Decided October 29, 1918.

Rate on locomotive and tender, on their own wheels, under steam from Algoma, Oreg., to Klamath Falls, Oreg., and not under steam from Klamath Falls to Dunsmuir, Cal., found to have been unreasonable. Reparation awarded.

A. Larsson for complainant.

Elmer Westlake for defendant.

R. Walton Moore for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3.

Complainant is a corporation engaged in the lumber business at Algoma, Oreg. By complaint, filed November 9, 1916, it alleges that defendant's charges on a locomotive and tender, on their own wheels, shipped March 16, 1915, from Algoma to Dunsmuir, Cal., were unreasonable. Reparation is asked.

The locomotive with its tender moved from Algoma under its own power in charge of a pilot furnished by defendant, the bill of lading describing the shipment as "Locomotive—under steam. For repairs," and showing Dunsmuir as the destination. At Klamath Falls, Oreg., 9 miles from Algoma, defendant's car inspector discovered that the air pump was out of order and refused to allow the locomotive to proceed under its own power. Upon receipt of a notification to that effect, complainant authorized the transportation of the locomotive to Dunsmuir as dead freight, and it so moved, although a new bill of lading was not issued. Charges were collected for the movement from Algoma to Klamath Falls in the sum of \$10, based on a commodity rate of 75 cents per mile, minimum charge \$10, applicable on locomotives and tenders, on own wheels, under steam; and beyond in the sum of \$397.76, based on a weight of 124,300 pounds and the class E rate of 32 cents per 100 pounds, in accordance with the rating provided in the western classification, which governed, on locomotives and tenders, on their own wheels, moving in trains, not under own power. There was also collected a pilotage charge of \$13.01, concerning which there is no controversy. The

tariff publishing the rate provides that it "includes transportation of crew in charge, but does not include cost of supplies or pilot." This charge represented the pilot's time and supplies furnished.

Complainant does not attack the charges assessed for the movement from Algoma to Klamath Falls. It contends that defendant should have repaired the air pump at Klamath Falls and permitted the locomotive to proceed under its own power. It was testified for defendant, that it had no facilities for making such repairs at that point.

Complainant compares the class E rate of 32 cents per 100 pounds applied from Klamath Falls to Dunsmuir, 112 miles, with a rate of 20 cents per mile, minimum charge \$10, provided in the western classification for the transportation of dining, parlor, and sleeping cars on their own wheels. The freight charges collected for the movement from Klamath Falls to Dunsmuir approximated \$3.55 per mile and 5.71 cents per ton-mile.

For defendant it was admitted that the charges assessed were unreasonable, and a willingness to make reparation was expressed. Commodity rates cited for defendant on locomotives and tenders on their own wheels, not under their own power, voluntarily established by defendant for intrastate hauls in the states of California and Nevada, for distances of from 23 miles to 83 miles yield ton-mile earnings ranging from 1.44 cents to 5.8 cents. These rates average slightly in excess of 50 per cent of the class E rates in effect from and to the same points.

We find that the rate charged on the shipment in question was unreasonable to the extent that the portion thereof applicable to the transportation from Klamath Falls to Dunsmuir exceeded 17 cents per 100 pounds.

Ordinarily we do not award reparation except to a basis which is or has been in effect or which we require to be established, over the route of movement. The basis of 17 cents has not been in effect, but we do not require its establishment for the reason that, since this case was heard, the Director General, in the exercise of powers conferred upon the President by the federal control act, has initiated increased rates. By supplemental complaint, which adopts the allegations in the original complaint, filed with our permission on October 7, 1918, the Director General was made a party defendant. His answer denies that complainant is entitled to relief. No further hearing was asked or had. The reasonableness of the increased rates is not brought into issue, and upon the present record no order for the future will be entered.

We further find that complainant made the shipment as described and paid and bore the charges thereon; that it has been damaged to

the extent of the difference between the freight charges collected and those that would have accrued on the basis herein found reasonable; and that it is entitled to reparation in the sum of \$186.45, with interest.

An appropriate order will be entered.

No. 10073.¹

NATIONAL WHOLESALE LUMBER DEALERS
ASSOCIATION ET AL.

v.

SAVANNAH & STATESBORO RAILWAY COMPANY ET AL.

Submitted April 19, 1918. Decided October 29, 1918.

Two carloads of lumber from Arcola, Ga., one to New York, N. Y., and the other to Corona, N. Y., found to have been misrouted. Reparation awarded.

W. S. Phippen for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

Complainant, a voluntary association of wholesale lumber dealers and manufacturers at New York, N. Y., alleges by complaints seasonably filed on behalf of Robert R. Sizer & Company, a corporation engaged in the lumber business at New York, that; due to misrouting, unreasonable charges were collected on two carloads of lumber shipped in January, 1916, from Arcola, Ga., to New York, one of which was reconsigned to Corona, N. Y. Reparation is asked. Rates are stated in cents per 100 pounds.

The shipments were routed by the shipper "Penn. R. R. delivery," and moved from Arcola by way of the Savannah & Statesboro Railway to Cuyler, Ga., Seaboard Air Line Railway to Richmond, Va., and beyond over the lines of defendants by way of Potomac Yard, Va. Charges were collected on the shipment to New York in the sum of \$139.03 at the legally applicable rate of 34.5 cents and a

¹ This report also embraces No. 10074, Same v. Same.

weight of 40,300 pounds, and on the shipment to Corona in the sum of \$149.73 at the legally applicable rate of 34.5 cents and a weight of 43,400 pounds, plus a diversion charge of \$2.

There were contemporaneously in effect from Arcola joint rates of 29.5 cents to New York and 30.75 cents to Corona applicable by way of the Savannah & Statesboro and the Seaboard Air Line to Portsmouth, Va., thence over the New York, Philadelphia & Norfolk Railroad by way of Pinners Point, Va., to Delmar, Del., and the Pennsylvania system beyond. The initial carrier in its answer admits that its agent billed the shipments by way of Richmond.

We find that the Savannah & Statesboro Railway Company misrouted the shipments; that Robert R. Sizer & Company made the shipments as described and bore the charges thereon, and was damaged by the misrouting to the extent of the difference between the charges collected and those that would have accrued had the shipments moved by way of Pinners Point; and that it is entitled to reparation from the Savannah & Statesboro Railway Company in the sum of \$36.41, with interest. An order will be entered accordingly.

51 I. C. C.

No. 9866.
STEIN & COMPANY,
v.
ATLANTA, BIRMINGHAM & ATLANTIC RAILWAY
COMPANY ET AL.

Submitted November 23, 1917. Decided October 29, 1918.

Charges on a carload of scrap copper, in bales, from Atlanta, Ga., to Perth Amboy, N. J., found to have been unreasonable. Reparation awarded.

Ernie Adamson for complainant.

R. Walton Moore and *D. Lynch Younger* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

The complainants are M. L. Breman, J. B. Breman, and M. Stein, copartners, engaged in the scrap-metal and junk business at Atlanta, Ga., under the name of Stein & Company. By complaint filed August 13, 1917, as amended, they allege that the fifth-class rate of 66 cents per 100 pounds, minimum 36,000 pounds, charged for the transportation in December, 1916, of a carload of scrap copper, in bales, from Atlanta to Perth Amboy, N. J., was unreasonable to the extent that it exceeded 40 cents, minimum 30,000 pounds. They pray for reparation on all shipments moving within the statutory period and the establishment of a reasonable rate. The evidence introduced was confined to the shipment described in the complaint. Rates are stated in cents per 100 pounds.

The shipment, consisting of scrap copper in machine-pressed bales, weighed 31,245 pounds and moved over the defendants' lines from Atlanta to Perth Amboy, a distance of 1,190 miles. Charges were collected in the sum of \$237.60 at the applicable fifth-class rate of 66 cents, minimum 36,000 pounds, governed by the southern classification. Contemporaneously a carload commodity rate of 43 cents, minimum 30,000 pounds, applied on scrap copper, in barrels or boxes, from and to these points over the route of movement. Similar commodity rates, minimum 30,000 pounds, applied from other points in the same general territory, including rates of 43 cents from Columbus, Cedartown, and Rome, Ga., 35 cents from Chattanooga and Knoxville, Tenn., and 42 cents from Macon, Ga., to Perth

Amboy and other eastern destinations. There were no commodity rates from and to these points applicable on scrap copper in bales, except a rate of 40 cents from Macon, which was unrestricted as to package requirements. Commodity rates which were the same on scrap copper in bales as in barrels or boxes were in effect from Atlanta to Ohio River crossings. The southern and official classifications make no differentiation in the carload ratings on scrap copper on the basis of the manner of packing.

For the complainants, it is stated that scrap copper, when compressed in bales, is much more easily handled than when packed in barrels or boxes, and is less liable to loss by reason of damage to the container or by theft. The bales are 2 by 3 by 4 feet in dimension and weigh from 800 to 1,200 pounds each. The value of scrap copper at the time of movement was from 20 to 25 cents per pound, or from \$6,000 to \$7,500 per car. From 40 to 50 cars of scrap copper are shipped from Atlanta annually, most of which move to eastern destinations.

The witness who appeared in defendants' behalf admitted that the rates on scrap copper in bales should not exceed the rates on the same commodity in barrels or boxes, but contended that in view of the light tonnage and high value of this commodity rates less than the appropriate class rates should not be applied, irrespective of whether the commodity is shipped in bales or in barrels or boxes. It was also urged that the fifth-class rate was reasonable and that there is no need for a carload minimum less than 36,000 pounds.

We find that the charges exacted upon the shipment in question were unreasonable to the extent that they exceeded those that would have accrued at a rate of 43 cents per 100 pounds, minimum 30,000 pounds. We further find that the complainants made the shipment as described and paid and bore the charges thereon; that they have been damaged to the extent that the charges paid exceeded the charges that would have accrued on the basis herein found reasonable; and that they are entitled to reparation in the sum of \$103.25, with interest.

The Director General, in exercise of powers conferred upon the President by the federal control act, has initiated rates which exceed those assailed. Such rates have not been brought into issue and the Director General has not been made a party defendant. No order for the future can be entered upon the present pleadings.

An order awarding reparation will be entered.

No. 9754.
EDWARD PITTWOOD
v.
NORTHERN PACIFIC RAILWAY COMPANY.

Submitted October 20, 1917. Decided November 14, 1918.

A warehouse owner is not entitled to recover damages for depreciation in the rental value of his property as a result of leases by a railroad company of similar properties at nominal rentals to shippers.

Oscar Cain for complainant.

Chas. A. Murray for defendant.

REPORT OF THE COMMISSION.

WOOLLEY, *Commissioner*:

By complaint filed June 26, 1917, the complainant alleges that he is owner of a building, suitable for warehouse purposes, situated immediately adjacent to the tracks of the defendant in Spokane, Wash. He alleges further that defendant is owner of warehouse sites and warehouse buildings in Spokane which it leases to shippers in interstate commerce at nominal rentals, and that by reason of such leases he is unable to obtain a reasonable rental for his warehouse. He asks for an award of damages equal to the difference between the alleged reasonable rental of his warehouse and the rental actually received over a period of time.

In view of the conclusion reached herein we may assume, without so finding, that the facts alleged in the complaint were established by proof. Complainant does not allege that he has ever been a shipper over the line of the defendant and did not introduce any evidence upon this point.

This Commission has power to award damages only when they are suffered in consequence of a violation of the act to regulate commerce. What is the violation presented here?

Complainant contends that a discrimination "against owners of warehouses and warehouse property in Spokane, among others your complainant" is disclosed. Clearly the contention is without merit. A warehouse owner, a landlord seeking to rent his property, as such, has no relation with a common carrier which could result in a discrimination against him in violation of the act to regulate commerce. The discrimination there forbidden is in respect of transportation.

If defendant, in its capacity of common carrier, has been guilty of unlawful discrimination such discrimination was directed not against complainant or other warehouse owners, but against those shippers who were not lessees of defendant's warehouse properties or who, if lessees, were not granted as favorable terms as the lessees who paid nominal rentals.

And manifestly the damages alleged to have been suffered by complainant were not the direct and proximate consequences of discrimination between shippers by defendant. It may be true that the leasing of properties to certain shippers at nominal rentals adversely affected the rental value of complainant's warehouse; but it must be borne in mind that the result would have been the same if defendant had leased its properties at nominal rentals to persons who were not shippers and in that event no violation of the act to regulate commerce could have been claimed.

The general tendency of the law, in regard to damages at least, is not to go beyond the first step * * *. * * * It does not attribute remote consequences to a defendant * * *. *Southern Pacific Co. v. Darnell-Taenzer Co.*, 245 U. S., 531.

This report deals only with the right of complainant to recover damages. The question of the lawfulness of the existing leases of property at Spokane to shippers by the Northern Pacific Railway Company and other railway companies is now before us for consideration in a general investigation instituted upon our own motion, No. 6562, *In the Matter of Leases and Grants of Property by Carriers to Shippers*, and nothing here said should be considered as an expression of opinion upon that matter.

Complainant's prayer for damages is denied. The complaint should be dismissed. It will be so ordered.

51 I. C. O.

No. 9589.

NATIONAL MALLEABLE CASTINGS COMPANY

v.

PITTSBURGH & LAKE ERIE RAILROAD COMPANY ET AL.

Submitted January 12, 1918. Decided November 26, 1918.

Defendants' refusal to compensate complainant for the expense of interchange switching of cars moving interstate to and from its plant at Sharon, Pa., found to have resulted in the exaction of charges for transportation which were unjust and unreasonable and to have subjected complainant to undue prejudice. Reparation awarded.

Cassoday, Butler, Lamb & Foster; Karl D. Loos; Herbert Pope; and B. B. Vedder for complainant.

Ernest S. Ballard, M. B. Pierce, and James Stillwell for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS MEYER, AITCHISON, AND WOOLLEY.

MEYER, *Commissioner*:

Complainant, a corporation, manufactures iron and steel castings at Sharon, Pa. By complaint filed January 29, 1917, as amended, it alleges that the defendants' failure to reimburse it for switching interstate shipments between defendants' tracks and complainant's plant, between April 1, 1914, and May 8, 1916, inclusive, while performing a like service for other industries at Sharon without charge in addition to the line-haul rates, resulted in the payment by complainant of charges that were unreasonable, unjustly discriminatory, and unduly prejudicial. It prays for reparation based upon the cost of this service. The claims were filed with the Commission informally on July 24, 1915, and October 2, 1916.

Complainant's plant is located within the switching limits of Sharon. It owns 2 locomotives and 9 freight cars, and operates over some 3 or 4 miles of private track on the plant property. Complainant serves no other shippers and is not a common carrier. The plant is bordered on the west by the tracks of the Pennsylvania Railroad and on the east by the tracks of the Erie Railroad, which are also used by the New York Central and the Pittsburgh & Lake Erie railroads. Complainant's track is connected with both lines by in-

terchange tracks owned by the defendants and located on their rights of way.

The services performed by complainant consisted of switching cars from defendants' interchange tracks, weighing, classifying, and spotting once for loading or unloading at convenient places within the plant property, and reversing the movement with outbound cars. The longest haul is about one-half mile. Defendants' engines performed no service on complainant's tracks. The plant traffic consisted principally of pig iron, coal, oil, sand, limestone, and ferromanganeses, inbound, and iron and steel castings, outbound.

On December 30, 1905, the Pennsylvania, the Erie, and the Lake Shore & Michigan Southern Railway, now the New York Central, contracted to pay complainant for performing the interchange service on the basis of two-thirds of its total operating cost, prorated between them according to the cars handled for each, upon itemized monthly statements. Later, the Pittsburgh & Lake Erie entered Sharon under trackage rights and made similar allowances to complainant. One-third of the cost was assumed by complainant, to cover intraplant switching other than interchange and initial spotting. The allowances were made until April 1, 1914, upon which date, following the *Industrial Railways Case*, 29 I. C. C., 212, they were discontinued. During a part of the period prior to April 1, 1914, the carriers' tariffs provided for such allowances. Until May 9, 1916, complainant continued to perform the services and to render monthly cost statements according to the terms of the contract. In *Car Spotting Charges*, 34 I. C. C., 609, we found that the defendants had not justified proposed additional charges for spotting cars on industry tracks at Sharon and other points. Effective May 8, 1916, defendants reinstated the allowances to complainant and others, on the basis of the actual cost of the service performed, as submitted by monthly statements, with a maximum of 4.63 cents per ton. By tariffs effective June 15, 1916, the maximum per ton was eliminated. Subsequently a maximum of \$1.67 per car was established and is now in force.

It has been the practice of the carriers at Sharon and in the surrounding iron and steel industrial region, to perform the services of spotting cars at convenient places within the inclosures of practically all of the iron and steel manufacturing plants which do not operate private engines, without charge therefor in addition to the line-haul rates, and to absorb out of the line-haul rates the charges of separately incorporated industrial railroads for interchange switching. *Car Spotting Charges, supra*. At most of the Sharon plants the carriers have performed services substantially similar to those performed by complainant at its plant.

A switching and spotting charge of \$2 per car was and is absorbed by connecting lines at Sharon under a reciprocal arrangement, necessitating an average haul of from $1\frac{1}{2}$ to 4 miles. At the plant of the American Sheet & Tin Plate Company, the spotting is done by the switching crews of the respective carriers, in turn, for periods of three months each. During the period covered by the complaint defendants performed spotting services, similar to the services performed by complainant and without charge in addition to the line-haul rates, for two industries which manufacture articles made by complainant, namely, the American Steel Foundries Company and the Sharon Foundry Company, with whom complainant is in direct competition. The latter company's plant is located at Wheatland, within the Sharon switching limits, $2\frac{1}{2}$ miles south of complainant's plant.

In the purchase of its raw materials, which constituted the inbound traffic, complainant had to buy in the same markets as its competitors. In the sale of its manufactured products, which constituted the outbound traffic, complainant was compelled to meet the prices named by these competitors by absorbing the additional cost of its interchange switching. Complainant had to pay the same Sharon rates both inbound and outbound as were paid by its competitors on like commodities. By the failure of the defendants to pay complainant the cost of the interchange switching or to perform the service themselves, the complainant incurred additional expenses which it could not add to the selling price of its products.

The defendants have not seriously questioned complainant's proof that the actual cost of the services to it was less than if the defendants had performed the work themselves. The items of cost and the number of cars handled for each carrier inbound and outbound are not questioned by defendants. The cost of intraplant switching is not shown separately, but defendants agreed that if reparation should be awarded the arbitrary of one-third of the cost assumed by the complainant under the old agreement was more than sufficient to cover the cost of the intraplant switching. It is agreed also that the cost of handling interstate and intrastate shipments was the same, and complainant is prepared to show in detail the separation of intrastate and interstate cars handled for each defendant.

The defendants made no attempt to justify the increased charges caused by discontinuing the payment of an allowance to complainant, which they had theretofore and have since made, but contend that they were under no legal obligation to perform the spotting service for complainant or to make an allowance to it, citing *Railroad Commissioners of Florida v. F. E. C. Ry Co.*, 42 I. C. C. 616; and that as a practical matter their engines could not operate within the

complainant's plant on account of a sharp curve. But the complainant shows that this curve is at the extremity of the plant farthest from the points of interchange, and existed before the contract with complainant was made and when the defendants themselves were performing the services. The defendants further contend that they may not now be required to pay for the services which the complainant performed voluntarily and without demand upon the carrier for their performance, citing *General Electric Co. v. N. Y. C. & H. R. R. Co.*, 14 I. C. C., 237. Even if no specific demand were made upon the carrier to perform the service, a similar contention of the defendants was answered in *Stewart Iron Co. v. P. Co.*, 47 I. C. C., 512, in which we said that the law does not require the performance of a vain act.

In deciding the issue here presented the controlling inquiry is whether or not the service performed by the industry and for which an allowance is sought can be regarded as a service substituted for the terminal service which defendants would have been obliged to perform upon their own rails had not the industry tracks been available. *Associated Jobbers of Los Angeles v. A., T. & S. F. Ry. Co.*, 18 I. C. C., 310, 317, 318, *Los Angeles Switching Case*, 234 U. S., 294, 311. In the case last cited the United States Supreme Court upheld our finding that industry spurs, located within the Los Angeles switching district and extending from one-fifth of a mile to 7 miles from the main tracks of the line-haul carriers, may properly be regarded as part of the carriers' terminal facilities and that the spotting of cars to industries reached by such tracks is a service contemplated by the line-haul rates which carriers may be required to perform without extra charge. In *Car Spotting Charges*, 34 I. C. C., 609, 616, 618, we held that "the mere size or complexity of the industry is not controlling in determining whether or not the line-haul rate covers the receipt or delivery of freight at the door of the plant," and said further:

The service involved in the placement of cars for loading or unloading at an isolated industry to which a single spur leads may be as great as that rendered in the placement of cars for loading or unloading in a large plant having an intricate system of interior tracks. Indeed, there is testimony tending to show that by reason of greater density of traffic and greater tonnage the cost of spotting at the larger industries is less per car than at the smaller industries. At the large industries the trunk line may render interplant services in the movement of cars from place to place within the plant during the processes of manufacture which it has no occasion to render at smaller industries, and for such services an additional charge should be made; but where the service rendered is merely a substitute for the service which would be required if the movement were to or from a team track, an industry spur, or a private siding, nothing should be added to the charge for the line haul.

As existing rates must be deemed to have been constructed to cover the customary placement of cars at factory doors, whether upon an industry spur or

private siding, or upon the tracks of an industrial plant, and the outward movement of cars from such tracks, without regard to the size or nature of the plant, to now add a charge to the line-haul rate for that service would be revolutionary.

* * * * *

There may be cases in which the spots at which cars are placed for loading and unloading in complex industries are so located that the request for the receipt and delivery of carload freight at such spots could not, in view of general usage, be regarded as reasonable, and where a charge for the spotting service in addition to the line-haul rate might therefore be justified, but the mere fact that an industry is complex, or that it requires an interplant service in addition to the receipt and delivery of carload freight, is not sufficient to justify an additional charge for the placing of cars at the door of the industrial plant for the receipt or delivery of carload freight. The line-haul rate, however, covers only one placement of the car for loading or unloading, and an additional charge should be made for each additional placement of the car for that purpose.

The mere fact that many individual plants are operated together as a single industry does not deprive the industry of the right to such a service in the receipt and delivery of carload freight at each of the several plants as that plant would be entitled to have if it were operated separately, unless the collective operation so far removes the necessity for such a service as to make it unreasonable for the industry to demand the service.

To permit the carriers to add to the line-haul rate a charge for the movement of cars incident to the receipt and delivery of carload freight at industries selected because of their size or complexity, or upon some other basis equally uncertain, while treating a like service at all other industries as covered by the line-haul rate, would result in unjust discrimination of a flagrant character.

In numerous cases subsequently decided we have fixed reasonable allowances for switching to and from the tracks of the line-haul carriers performed by the industry itself either directly or through a common-carrier industrial line and in many instances the character of the switching was similar to that performed by the present complainant. *Chicago, West Pullman & Southern R. R. Co. Case*, 37 I. C. C., 408; *Indiana Northern Railway Case*, 37 I. C. C., 491; *Lorain & Southern R. R. Co. Case*, 37 I. C. C., 497; *Chestnut Ridge Railway Case*, 37 I. C. C., 558; *Moshassuck Valley Railroad Case*, 37 I. C. C., 566; *Mitchell Coal & Coke Co. v. P. R. R. Co.*, 38 I. C. C., 40; *Westport Stone Co. and Big Four Stone Co. Case*, 38 I. C. C., 316; *Pittsburgh Steel Co. v. P. & L. E. R. R. Co.*, 39 I. C. C., 312; *New Jersey, Indiana & Illinois R. R. Case*, 41 I. C. C., 42; *Allowances to Kanawha, Glen Jean & Eastern*, 41 I. C. C., 53; *Class Rates from Chestnut Ridge Railway Stations*, 41 I. C. C., 62, 50 I. C. C., 152; *Johnstown & Stony Creek R. R. Co. Case*, 41 I. C. C., 46; *Northampton & Bath R. R. Co. Case*, 41 I. C. C., 68; *Divisions of Joint Rates for Transportation of Stone*, 41 I. C. C., 321; *Union Lumber Co. v. G., C. & S. F. Ry. Co.*, 37 I. C. C., 225, 41 I. C. C., 411; *In re Muncie & Western R. R. Co.*, 30 I. C. C., 434, 38 I. C. C., 510; *Marion & Rye Valley Ry. Co. Case*, 42 I. C. C., 607; *Campbell's Creek Coal Co. v. A. A.* 51 I. C. C.

R. R. Co., 29 I. C. C., 682, 33 I. C. C., 558; *Campbell's Creek R. R. Co. v. A. A. R. R. Co.*, 44 I. C. C., 574; *Buffalo Union Furnace Co. v. L. S. & M. S. Ry. Co.*, 21 I. C. C., 620, 44 I. C. C., 267; *Johnstown, Pa., Switching*, 43 I. C. C., 654; *Poteau Coal and Mercantile Co. v. A. & S. Ry. Co.*, 40 I. C. C., 459; *Stewart Iron Co. v. P. Co.*, *supra*; *Oliver Chilled Plow Works v. N. Y. C. R. R. Co.*, 45 I. C. C., 356; *Westport Stone Co. v. C., C., C. & St. L. Ry. Co.*, 48 I. C. C., 637; and *Huron Milling Co. v. P. M. R. R. Co.*, 49 I. C. C., 558.

A determination that it is the duty of the line-haul carrier to perform a particular switching and spotting service, for the performance of which by the industry an allowance should be paid, presupposes that the nature of the industry is such as to permit the performance of that service by the carrier. In *The Lake Terminal Case*, 50 I. C. C., 489, the complainant industry could not under any circumstances have permitted the line-haul carriers to spot cars at points within its plant. The intermill service at the plant was so interwoven with the interchange service that it was necessary for the engines performing the interchange service to handle the intermill business. Had the line-haul carriers attempted to distribute cars within the plant immediately upon their arrival at the plant interchange point they would in effect have taken possession of the works and put the industry out of business. These are among the salient facts which constitute the ground for the conclusion reached in that case that the complainant "performed no work within its plant, either directly or through its plant railroad, which it could lawfully have called upon defendant line carriers to do for it and therefore did no service for the line carriers for which it lawfully could demand compensation."

The instant case is clearly distinguishable from *The Lake Terminal Case*, *supra*. The fact that the line-haul carriers formerly performed the spotting at complainant's plant under conditions practically identical with the conditions now prevailing indicates conclusively that it is not such a service as they are precluded from performing because of the nature of the industry but on the contrary is one which may properly be regarded as a service substituted for a terminal service which defendants would otherwise have been obliged to, but did not, perform. The testimony shows that the complainant can perform the spotting of cars at its plant with less work and at less cost than could the defendants. Thus it is evident that a public advantage accrues by reason of the fact that the line-haul carrier is relieved of performing this terminal service, the performance of which in the least expensive manner possible should not be discouraged.

We find that the failure of defendants to pay an allowance to complainant for interchange switching and spotting of cars moving in interstate commerce resulted in the exaction of charges for transportation which were unjust and unreasonable; that defendants, by refusing to pay an allowance or to perform the service for complainant while performing such services without additional charge for other iron and steel foundries, competitors of complainant similarly situated, subjected complainant to undue prejudice and disadvantage; that complainant was thereby damaged to the extent of the cost of such service borne in connection with all interstate shipments delivered within the period from April 1, 1914, to May 8, 1916; and that it is entitled to reparation, with interest. A finding of undue prejudice and disadvantage would be warranted in the instant case even though the service rendered could not be regarded as one contemplated by the line-haul rate. That this might be the case was recognized in the *Lake Terminal Case*, *supra*, where we said at page 495, with respect to the nonpayment of allowances during the period there involved:

Nor may there be any readjustment for that period in the form of reparation unless the evidence of record convincingly shows some unjust discrimination by the defendant carriers against the tube company in terminating their service at the plant interchange points or unless the Commission is satisfied upon the whole record that the termination of their service at those points was unreasonable.

The finding that the charges exacted for transportation were unjust and unreasonable finds further support in *East Jersey R. R. & T. Co. v. C. R. R. Co. of N. J.*, 36 I. C. C., 146, 37 I. C. C., 357; *Oliver Chilled Plow Works v. N. Y. C. R. R. Co.*, *supra*; *Westport Stone Co. v. C. C. & St. L. Ry Co.*, *supra*; and *Huron Milling v. P. M. R. R. Co.*, *supra*. Our finding that the complainant was subjected to undue prejudice and disadvantage by reason of the failure of defendants to pay an allowance for interchange switching and spotting of cars is substantiated by *Stewart Iron Co. v. P. Co.*, *supra*, in which case the complainant was also located at Sharon and the facts were practically identical with the facts in the instant case. The exact amount of reparation can not be determined on this record. The contract of December 30, 1905, which as previously stated, provides that two-thirds of the cost of switching is attributable to interchange switching and spotting and should be paid for by defendants, also provides that the cost of switching should include—(1) actual wages of men employed in that service; (2) the cost of lubricants and water consumed; (3) \$43.75 per month to cover the cost of coal; (4) current and running repairs to the switching locomotive in use; and (5) \$30 per month, or \$1 per day for shorter periods, to cover interest and depreciation in the investment in complainant's locomotive. From the

record it is evident that allowances based upon the terms of this contract would not exceed the actual cost of performing the interchange and spotting service, and reparation will be awarded upon that basis. Complainant should prepare statements showing by months the items of cost in accordance with the terms of the contract of December 30, 1905, and according to the claim statements filed with the Commission, and showing the total number of loaded cars interchanged, inbound and outbound, the average cost per car, the number of interstate cars handled for each defendant, and the amount of reparation due thereon under our findings herein, which several statements should be submitted to the respective defendants for verification as to the number of cars which moved interstate and as to the amount of reparation. Upon receipt of statements so prepared and verified, we will consider the entry of an order awarding reparation.

WOOLLEY, *Commissioner*, concurring:

The foregoing report attempts to distinguish this case from *The Lake Terminal Case*, 50 I. C. C., 489, on the ground that whereas it was, and is, practicable for the carriers to perform the spotting service for which the complainant now asks an allowance on cars spotted by its plant railroad during the period of approximately two years when such allowance was not made, in the case cited the complainant industry could not have permitted the line-haul carriers to spot cars at points within its plant immediately upon their arrival at the plant interchange point without the complete disruption of the activities of the interplant railroad. That, in my opinion, is not a valid distinction and if followed would divide industries with private tracks into two classes upon a very uncertain basis and thereby produce substantial discriminations. In my view the principles announced in the *Lake Terminal Case* are controlling here.

There is, however, the further question of discrimination during the period from April 1, 1914, to May 8, 1916, which was between our decisions in the *Industrial Railways Case*, 29 I. C. C., 212, and *Car Spotting Charges*, 34 I. C. C., 609, and as the record is clear that the complainant was subjected to undue prejudice and disadvantage and its competitors, for whom the defendants performed spotting services without the imposition of charges other than the line-haul rates, were unduly preferred, I concur in the majority report in so far as it deals with reparation.

No. 9062.
SHARON STEEL HOOP COMPANY
v.
PENNSYLVANIA COMPANY ET AL.

Submitted June 29, 1917. Decided November 26, 1918.

Increased charges resulting from defendants' refusal to compensate complainant for the expense of spotting cars moving interstate to and from its plant at Farrell, Pa., while contemporaneously performing a like service, without charge, for complainant's competitors similarly situated, found to have been unjust and unreasonable and complainant found to have been subjected to undue prejudice and disadvantage. Reparation awarded.

J. P. Whitla for complainant.

James Stillwell for Pennsylvania Company and New York Central lines.

M. B. Pierce for Erie Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 1. COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

MEYER, *Commissioner*:

Complainant is a corporation engaged in the manufacture and sale of steel and its products at Farrell, Pa. By complaint filed June 27, 1916, it alleges that defendants' failure and refusal to switch and spot cars moving interstate to and from its plant, or to compensate it for the performance of this service, between April 1, 1914, and May 7, 1916, inclusive, while performing a like and contemporaneous service, without charge, at plants of its competitors, similarly situated, was unreasonable, unjustly discriminatory, and unduly prejudicial. It asks reparation based upon the cost of this service.

Farrell is in the Shenango and the Mahoning valleys rate district, in which are located many steel plants with which complainant competes. Complainant's shipments consist principally of coal, scrap iron, pig iron, ore, and sand inbound, and steel and billets and steel products, such as hoops, strips, and bands, outbound.

The service complainant performs consists of switching, with its own locomotive and crew, loaded and empty cars, for hauls of approximately 1,000 to 1,500 feet, from and to points within its yard to and from the interchange tracks of the Lake Shore & Michigan Southern Railway, now the New York Central Railroad and herein-

after called the Lake Shore, and the Erie Railroad. Complainant performs no service for other shippers and is not a common carrier. The intraplant switching is performed by a small locomotive on narrow-gauge tracks or by a standard-gauge locomotive crane.

Prior to October, 1904, all of complainant's interchange switching and spotting was performed, without charge, by the carriers; subsequent thereto and up to April 1, 1914, defendants allowed complainant 3 cents per ton on all inbound and outbound shipments on which the transportation charges amounted to 25 cents or over per ton. The tariff provisions for this allowance were canceled on April 1, 1914, and provisions for a charge for this service when performed by the carriers, published to become effective the same date, were suspended by us and subsequently canceled. On May 8, 1916, defendants published an allowance not to exceed 2.08 cents per ton for the cost of this service when not performed by the carriers; on June 15, 1916, for the actual cost without limitation as to amount; and on May 23, 1917, limited the allowance to 84 cents per car, which provision is now in effect. Between April 1, 1914, and May 8, 1916, complainant continued to switch and spot cars to and from its plant as formerly but without any compensation therefor, while defendants performed this service, without charge, at competing plants.

At the first hearing defendants offered no evidence, but on petition by the Erie a second hearing was held at which this carrier introduced evidence in conflict with its original answer wherein it had denied knowledge of any request by complainant for the performance of these services at its plant. The Erie not only admitted receipt of a written request from complainant, but its then division superintendent at Youngstown, Ohio, testified to having replied by letter stating that he had held a conference with the division superintendent of the Lake Shore at Youngstown, and that an arrangement would probably be made whereby "the Lake Shore will furnish the engine and engine crew and the Erie Company will furnish the train crew to do the spotting at this plant as a joint matter." Subsequently, about May 26, 1914, he and the Erie's trainmaster visited complainant's plant and decided that the tracks leading into the plant had too sharp a degree of curvature to permit the performance of this service by standard switch engines of the Erie and Lake Shore. No actual tests were made or measurements taken, and defendants' evidence rests upon the assumption of the fact based upon general experience and a single observation of complainant's tracks, of which one of the witnesses had no pronounced recollection or opinion. Complainant denied receiving any reply to its demand for performance of this service by defendants, and there is also direct conflict as to whether defendants' witnesses ever

communicated their opinion to any responsible party in complainant's employ. For complainant it was testified that it frequently employed the standard-gauge switch engines of the Lake Shore in its yard for interchange switching and spotting for days at a time; that no complaint was ever made that these engines could not make the curves; that if these engines had not made the curves complained of the plant would have been forced to shut down immediately; and that these engines of necessity had to go around these curves in order properly to spot the cars. In substantiation of this evidence complainant introduced bills from the Lake Shore for the hire of two engines for periods of 18 days in November, 1909, and 9 days in January, 1914. From this we conclude that the Lake Shore, which was to furnish the engine under the agreement with the Erie, had engines at that time and in this locality capable of performing the interchange switching and spotting at complainant's plant.

It has been the practice of the defendants either to perform the service of spotting cars at practically all of the industries in the Mahoning and Shenango valleys or to pay the industry for performing that service. The same line-haul rates generally apply to and from all industries located within the Shenango and Mahoning valleys rate district, with many of which complainant comes into competition. Complainant testified that its manufacturing costs were increased to the extent of the cost of the spotting service, by reason of defendants' refusal to spot cars at its plant or to compensate it for that service, and that it was consequently placed at a disadvantage to that extent in competing for business. Complainant is able to perform the spotting service for all connecting carriers with less work and therefore cheaper than could the defendants were they to switch and spot cars independently of one another.

The situation here presented is almost identical with that presented in *Stewart Iron Co. v. P. Co.*, 47 I. C. C., 512, and *National Malleable Castings Co. v. P. & L. E. R. R. Co.*, 51 I. C. C., 537. The distinction drawn in the latter case between the situation there presented and the situation in *The Lake Terminal Case*, 50 I. C. C., 489, applies as well in the instant case. We find that defendants have failed to justify the increased rates resulting from their refusal to pay an allowance to the complainant for the service of spotting its cars in interstate commerce and that the failure to make such an allowance while performing such service without additional charge at other similarly situated steel mills subjected complainant to undue prejudice and disadvantage. We further find that the complainant has been damaged to the extent of the cost of that service.

Complainant prays for reparation on traffic moved during the entire period payment was denied, from April 1, 1914, to May 8, 1916.

The complaint, however, was not filed until June 27, 1916, and our award for reparation must therefore be confined to interstate shipments on which charges were paid within two years prior to that date. Complainant alleges that in this instance the defendants should not be given the advantage of the statute of limitations because their agents stated at different times that complainant would undoubtedly be eventually reimbursed for the cost of the spotting service. Under the statute here involved, however, "the lapse of time not only bars the remedy but destroys the liability." *Phillips v. Grand Trunk Ry.*, 236 U. S., 662, 667.

Reparation will be awarded on the basis of the cost to complainant of performing the spotting service but not in excess of 8 cents per ton, on which charges amounting to 25 cents per ton were paid within two years prior to June 27, 1916. The exact amount of reparation due can not be determined on this record. Upon the hearing complainant introduced statements showing the cost of interchange switching and spotting at its plant during the period in controversy. The cost items included in these statements are confined to wages for labor engaged in this service, supplies including coal and water, boiler insurance, and depreciation on the locomotive and interest on the complainant's investment therein. These statements have been checked and approved by one of the defendants. They should be supplemented by a showing of the total number of loaded cars handled inbound and outbound, the average cost per car, the number of cars handled for each defendant, and the amount of reparation due from each defendant under our findings herein, and should then be submitted to the respective defendants for verification. Upon receipt of statements so prepared and verified we will consider the entry of an order awarding reparation.

51 I. C. C.

No. 9991.

W. P. BROWN & SONS LUMBER COMPANY

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY
COMPANY ET AL.

Submitted April 15, 1918. Decided October 29, 1918.

Rates on lumber, in carloads, from Brasfield, Ark., to Athens, Tenn., found legally applicable and not shown to have been unreasonable or unduly prejudicial. Complaint dismissed.

R. R. May for complainants.

Claudian B. Northrop for Southern Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

The charges collected by the defendants on three carloads of oak lumber shipped from Brasfield, Ark., to Athens, Tenn., in January, 1917, are assailed herein as illegal, unreasonable, unduly prejudicial, and in violation of the fourth section. Reparation and the establishment of reasonable rates are asked. Rates are stated in cents per 100 pounds.

The shipments, aggregating 230,200 pounds, moved in open-top cars over the defendants' lines by way of Memphis, Tenn., a distance of 446 miles. Charges were collected in the sum of \$585.60, based on a combination rate of 25.5 cents composed of commodity rates of 8 cents to Memphis and 17.5 cents beyond. A class M distance rate of 16 cents was contemporaneously in effect on interstate shipments of lumber from Memphis to Athens, which rate complainants contend, should have been applied on these shipments. The tariff publishing the latter provided that, "Class rates shown herein may be used only when no specific rates have been provided." The rates charged were legally applicable. The defendants' tariffs also provided that an allowance of 500 pounds per car would be made for stakes and supports used on open-top cars, and, as no allowance was made for the stakes and supports used on two of the cars, they were overcharged \$2.54. The other car was undercharged 13 cents. The charges should be promptly adjusted.

The complainants' attack was directed specifically against the rate from Memphis to Athens. They cited, by way of comparison, rates of 12, 14, and 17 cents from Memphis to Chattanooga, Cleveland, and Knoxville, Tenn., respectively; also rates from Memphis to various interstate points, such as Louisville, Ky., New Orleans, La., and Chicago, Ill., and from points in Alabama and Mississippi to Athens. While these rates were upon a somewhat lower basis than the rate assailed, it was testified for the defendants that conditions affecting the rates cited were substantially different from those in connection with the rate from Memphis to Athens. The defendants' witness also testified that not only commodity rates but also specific class rates took precedence over the distance class rates, such as the 16-cent rate from Memphis to Athens, and that the application of the latter rates was confined almost entirely to isolated movements. The defendants cited a rate of 20 cents on lumber from Memphis to several stations on either side of Athens, and the rates between a large number of points in the south and southwest and in central freight association territory, with which the rate assailed compared favorably. The defendants also compared the through rate from Brasfield to Athens with rates from Athens and numerous other points in the south to destinations of corresponding or greater distances with favorable results. The rate charged yielded ton-mile earnings of 1.14 cents and, based on the average weight of complainants' shipments, car-mile earnings of 43.59 cents. The corresponding earnings under the 17.5-cent component for the movement beyond Memphis, a distance of 366 miles, were 9.56 mills and 36.45 cents, respectively.

Athens is directly intermediate to Knoxville over the route of movement. The departure from the long-and-short-haul rule resulting from the publication of a higher rate from Memphis to Athens than to Knoxville is protected by an appropriate fourth section application not heard with this case. At the hearing it was stated for the defendants that the carriers are now engaged in a general revision of the rates in the southeast in connection with our Fourth Section Order No. 3866, and that when the rates on lumber are revised this departure will be removed.

We find that the rates assailed are not shown to have been unreasonable or unduly prejudicial. Since this case was submitted the Director General, in the exercise of powers conferred upon the President by the federal control act, has initiated increased rates applicable to this traffic. Such rates have not been brought into issue and the Director General has not been made a party defendant. In the present state of the pleadings the rates so increased are not subject to review herein by this Commission. The complaint will be dismissed.

No. 10041.
DAVID KAUFMAN & SONS COMPANY
v.
NEW YORK CENTRAL RAILROAD COMPANY.

Submitted April 18, 1918. Decided October 29, 1918.

Rate on scrap iron, in carloads, from South Bend, Ind., to Rensselaer, N. Y., found to have been justified. Complaint dismissed.

Louis Kaufman for complainant.

John M. Sternhagen for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

This complaint, seasonably filed, assails as unreasonable the rate charged on a carload of scrap iron, shipped October 6, 1917, from South Bend, Ind., to Rensselaer, N. Y., and prays for reparation and a reasonable rate. Rates are stated in amounts per long ton unless otherwise specified.

The shipment weighed 90,420 pounds and moved over defendant's line. Charges were collected in the sum of \$226.01, at a commodity rate of \$5.60. The governing official classification rated and rates scrap iron, in carloads, per long ton the same as per net ton, sixth class. Prior to July 1, 1917, the sixth-class rate from and to the points in question was 24.2 cents per 100 pounds, equivalent under the above classification item to \$4.84 per long ton. On that date, following *The Fifteen Per Cent Case*, 45 I. C. C., 303, the sixth-class rate was increased to 28 cents per 100 pounds, or \$5.60 per long ton on scrap iron. Prior to August 20, 1917, a specific commodity rate of \$4.84 applied, but on that date it was increased to \$5.60, the rate assailed. The complainant contends that the increase in the rate on scrap iron to \$5.60 was not authorized or approved by us, and that the rate should not have been increased along with the rates on new iron and steel articles and billets, the values of which, it is stated, have greatly increased, whereas the value of scrap iron has remained practically unchanged.

Our original decision in *The Fifteen Per Cent Case*, *supra*, did not specifically authorize increases in the commodity rates on scrap iron, but the tariff naming the increased rate assailed was subsequently approved for filing under the fifteenth section of the act as 51 I. C. C.

amended August 9, 1917. The defendant shows that for many years carload commodity rates on scrap iron to points east of Buffalo, N. Y., and Pittsburgh, Pa., including Rensselaer, have been on the sixth-class basis and that the class rates are adjusted under the Chicago-New York percentage scale. Our supplemental order in *The Fifteen Per Cent Case*, dated March 12, 1918, provided that specific commodity rates which were on June 27, 1917, the same as the class rates from and to the same points, might be increased the same amounts as such class rates had been increased. In *Pollak Steel Co. v. B. & O. R. R. Co.*, 49 I. C. C., 238, we found that the class rates based on the Chicago-New York percentage scale as applied to billets and related iron and steel articles, including scrap iron, were not shown to be unreasonable.

We find that the defendant has justified the rate assailed. Since the submission of this case an increased rate has been initiated by the President, through the Director General of Railroads in the exercise of powers conferred by the federal control act. The Director General has not been made a party defendant and the reasonableness of the present rate can not be considered upon the present pleadings.

An order dismissing the complaint will be entered.

51 I. C. C.

No. 10079.

E. I. DUPONT DE NEMOURS & COMPANY

v.

WEST JERSEY & SEASHORE RAILROAD COMPANY
ET AL.

Submitted June 10, 1918. Decided October 29, 1918.

Two carload shipments of high explosives from Gibbstown, N. J., to East Radford, Va., found to have been misrouted and one shipment found to have been overcharged. Reparation awarded.

Harvey S. Farrow for complainant.

Henry Wolf Biklé for Pennsylvania Railroad Company and West Jersey & Seashore Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

The complainant is a corporation engaged in the manufacture of high explosives at Gibbstown, N. J. By complaint seasonably filed it alleges that unreasonable charges were collected on two carloads of high explosives, shipped February 22 and June 10, 1916, from Gibbstown to East Radford, Va., and asks for reparation and the establishment of a reasonable rate. Rates are stated in amounts per 100 pounds.

The shipments, weighing 35,320 and 23,560 pounds, were routed by the shipper "P R R, W M and N W." They moved, according to the initial carrier's billing instructions, over the West Jersey & Seashore and the Pennsylvania railroads to Hanover, Pa., Western Maryland Railway to Hagerstown, Md., and Norfolk & Western Railway beyond, 497.9 miles. Charges were collected on the first shipment in the sum of \$419.60, at a rate of \$1.188, and on the second, in the sum of \$267.41, at a rate of \$1.135. The answer of the initial carrier indicates that additional charges in the sum of \$12.48 were subsequently assessed on the second shipment, but it does not appear that these additional charges have been collected. The rate legally applicable was \$1.156, composed of a commodity rate of 28.4 cents, minimum 20,000 pounds, from Gibbstown to Hanover, and the first-class rates of 23.1 and 64.1 cents from Hanover to Hagerstown and from Hagerstown to East Radford, respectively. The first shipment was overcharged in the sum of \$11.30 and the second

was undercharged \$4.94. At the time of movement there was in effect over the lines specified by the shipper a combination rate of \$1.125, composed of a commodity rate of 32.6 cents from Gibbstown to Keymar, Md., and first-class rates of 15.8 cents from Keymar to Hagerstown and 64.1 cents beyond. As no junction points were specified in shipper's routing instructions the shipment should have been delivered to the Western Maryland at Keymar.

There were and are two other available routes open to complainant over which joint commodity rates of 95.6 cents applied, viz, the West Jersey & Seashore, Pennsylvania, Cumberland Valley Railroad, and Norfolk & Western, 507 miles; and the Philadelphia & Reading Railway, Western Maryland, and Norfolk & Western, 498.4 miles. The complainant contends that the rates charged were and are unreasonable to the extent that they exceeded and exceed 95.6 cents. It admits that the Western Maryland and Cumberland Valley are competing lines and that the routes over which the joint rates applied were competitive. No necessity is shown for the establishment of the joint rate by the route over which the shipments moved.

The Pennsylvania and Western Maryland usually apply first-class rates on high explosives between stations on their lines. Joint first-class rates are also published from certain points on the Pennsylvania to certain stations on the Western Maryland, but not to Hagerstown. The official classification, which governs, names no rating on high explosives, but provides that tariffs of the individual carriers will govern. First class is the approved basis in trunk line territory. *Dupont de Nemours Powder Co. v. C. R. R. Co. of N. J.*, 25 I. C. C., 19, and *Same v. L. & N. R. R. Co.*, 33 I. C. C., 288, and *Same v. P. & R. Ry. Co.*, 44 I. C. C., 531.

We find that the rates legally applicable by way of the defendants' lines are not shown to have been unreasonable, but that the West Jersey & Seashore Railroad Company misrouted the shipments; that complainant paid and bore the charges thereon, and was damaged by the misrouting to the extent of the difference between the charges applicable over the route of movement and those that would have accrued had the shipments been forwarded through Keymar; and that it is entitled to reparation from the West Jersey & Seashore Railroad Company in the sum of \$13.31 with interest; also to reparation from all of the defendants in the sum of \$11.30 with interest, the amount of the overcharge on the first shipment. The undercharge on the second shipment may be waived, but the West Jersey & Seashore should make settlement with its connections on basis of the charges legally applicable over the route of movement.

An order awarding reparation will be entered.

No. 10122.

STANDARD TIME ZONE INVESTIGATION.

Submitted December 20, 1918. Decided December 21, 1918.

Order defining limits of standard time zones, 51 I. C. C., 273, modified in part.

John H. Mock for city of Albany, Ga.

Dick T. Morgan for citizens of northwestern Oklahoma.

H. A. Gallwey for Butte, Anaconda & Pacific Railway Company.

SUPPLEMENTAL REPORT OF THE COMMISSION.

ATCHISON, *Commissioner*:

A report in the above matter, on which is based an order defining the limits of the various standard time zones, is to be found in 51 I. C. C., 273, and a modification thereof in 51 I. C. C., 499. Certain requests for modifications of our previous findings are now before us. From the record we conclude that the greater convenience of commerce will be served, and the intent of our original order will be better effected, by modifying our previous report herein in certain minor particulars.

The definition of so much of the boundary line between the Central and Mountain zones as is defined in Appendix 2 to the original report herein, 51 I. C. C., 293, 294, follows:

Kansas.— * * * thence crossing said railroad southerly to the boundary line between Oklahoma and Kansas and easterly along said state boundary line to the Cimarron River, at the northwest corner of Woods county, Okla.

Oklahoma.—From the intersection of the Cimarron River and the north boundary of the state of Oklahoma as last described, thence southeasterly following the course of the Cimarron River to the line between townships 24 and 25 north; thence east along said township line and crossing the Atchison, Topeka & Santa Fe Railway at Waynoka; thence southerly and westerly immediately south thereof and parallel with the line of said railway to the meridian 99 degrees west; thence south along said meridian to the Washita River; thence southwesterly through Ralph, and immediately north of and parallel with the Chicago, Rock Island & Pacific Railway to the west boundary of Sayre; thence crossing said railway and running immediately south thereof and parallel therewith in a westerly direction to the north and south boundary line between Oklahoma and Texas; thence south along said state boundary line to the southeast corner of Collingsworth county, Tex.

shall be amended to read as follows:

Kansas.— * * * thence crossing said railroad southerly to the boundary line between Oklahoma and Kansas, at the northwest corner of Beaver county, Okla.

Oklahoma.—From the point last described, southeasterly to the southeast corner of said Beaver county; thence south along the Oklahoma-Texas state line to the southeast corner of Collingsworth county, Tex.

51 I. C. C.

In consequence of the change in boundary line above indicated, to the list of excepted railroads shown in Appendix 2 to the original report, 51 I. C. C., 294, as located east of the zone boundary line, but as excepted from the United States standard Central time zone and included within the United States standard Mountain time zone, shall be added the following:

Name of railroad.	From—	To—
Atchison, Topeka & Santa Fe	Waynoka, Okla....	Oklahoma-Texas state line.
Chicago, Rock Island & Pacific.....	Sayre, Okla.....	Do.

The Clinton & Oklahoma Western from Ralph, Okla., to Cheyenne, Okla., and the Wichita Falls & Northwestern from Elk City, Okla., to Forgan, Okla., will be eliminated from the list of exceptions made as to railroad lines located west of the boundary line, but included within the Central standard time zone; and Waynoka, Ralph, and Sayre, Okla., will be eliminated from the list of municipalities stated as located upon the zone boundary line.

The Butte, Anaconda & Pacific Railway shall be eliminated from the list of railroads wholly within the Pacific zone, shown in Appendix 4, at 51 I. C. C., 298, and shall be added to Appendix 3, under the heading "Railroads within both Mountain and Pacific zones," as operated under Mountain time standard.

As is shown in Appendix 2 of the original report, that part of the line of the Kansas City, Mexico & Orient Railroad from Altus, Okla., to San Angelo, Tex., although included in the United States standard Central time zone, was excepted therefrom, and included in the Mountain zone. That line is now under federal control, and, with the consent of the United States Railroad Administration, the exception will be canceled, so that the line from Wichita, Kans., to San Angelo, Tex., will be operated under the Central time standard, and from San Angelo to Alpine, Tex., under the Mountain standard. The tables found at 51 I. C. C., 294 and 296, will be amended accordingly.

In response to the request of the City Council of the city of Albany, Ga., that city, which is shown to be upon the boundary line between the Eastern and Central zones, will be added to the list of similarly situated municipalities shown in Appendix 1 of the original report, 51 I. C. C., 289, so as to be considered within the United States standard Eastern zone.

An appropriate order will be entered.

No. 7924.¹

INDEPENDENT COOPERATIVE LUMBER COMPANY

v.

LOUISIANA WESTERN RAILROAD COMPANY ET AL.

Submitted May 22, 1916. Decided December 2, 1918.

Defendants' rates for the transportation of cypress lumber and shingles, in straight or mixed carloads or mixed with pine lumber and shingles in carloads, from Lake Charles, La., to various points in Texas, found to have been unreasonable. Reparation awarded.

A. R. Mitchell for complainants.

C. C. Cary for Beaumont, Sour Lake & Western Railway Company; Orange & Northwestern Railroad Company; St. Louis, Brownsville & Mexico Railway Company; and others.

Drew Head for Gulf, Colorado & Santa Fe Railway Company and Panhandle & Santa Fe Railway Company; and *E. H. Thornton* for Galveston, Harrisburg & San Antonio Railway Company; Texas & New Orleans Railroad Company; Houston & Texas Central Railroad Company; Houston, East & West Texas Railway Company; and San Antonio & Aransas Pass Railway Company.

E. H. Buffington for New Iberia & Northern Railroad Company; *C. Schonfelder, jr.*, for Texas & Pacific Railway Company; Missouri, Kansas & Texas Railway Company of Texas and *C. E. Schaff*, receiver; and *Abilene & Southern Railway Company*; and *C. W. Owen* for Louisiana Western Railroad Company and *Morgan's Louisiana & Texas Railroad & Steamship Company*.

Fred H. Wood; *Denegre, Leovy & Chaffe*; and *Baker, Botts, Parker & Garwood* for all defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are *W. S. Dunbar* and *B. E. Dunbar*, copartners, engaged in the lumber business at Lake Charles, La., under the name of the Independent Cooperative Lumber Company. By complaints, filed April 17, 1915, and December 2, 1915, as amended, they allege that defendants' rates for the transportation of cypress lumber and shingles, in straight or mixed carloads, or mixed with pine lumber and shingles in carloads, from Lake Charles to various points in Texas are, and were during the period from August 12, 1913, to

¹ The report also embraces No. 8498, Same v. Abilene & Southern Railway Company et al.

June 17, 1914, unreasonable and unjustly discriminatory. Reparation is asked on shipments which moved during that period.

Apparently the shipments consisted principally of pine lumber, but each car contained more or less cypress lumber or shingles. Charges were assessed at the rate applicable to cypress lumber and shingles, in accordance with the following tariff rule:

Rate on mixed carloads of different kinds of lumber, and articles taking the same rates, or arbitraries higher, will be the highest rate applicable on any article contained in the car.

While the prayer of each complaint is for rates on cypress lumber and shingles not in excess of the contemporaneous rates on pine lumber and shingles, complainants urged at the hearing that either the rates on cypress and on pine from Lake Charles to the Texas points should be the same, or else that on a mixed carload of cypress and pine a uniform arbitrary over the rate on pine should be applied on the cypress products and the rate on pine applied on the remainder.

The rates on cypress lumber and shingles from Lake Charles to the points in question apparently range from 2 cents to 10 cents per 100 pounds higher than the corresponding rates on pine lumber and shingles. Equal rates apply on pine lumber and cypress lumber from Lake Charles to points in Oklahoma and Kansas and to Omaha, Nebr., Kansas City, Mo., and Ohio and Mississippi river crossings.

Defendants compared the rates from Lake Charles to Texas destinations set forth in the complaint with rates to Texas destinations on pine and cypress lumber from Alexandria, Boyce, White Castle, and Harvey, La., and Orange, Tex., on lumber of all species from Omaha, Nebr., and St. Louis, Mo., to Nebraska, South Dakota, and Colorado destinations, and with rates approved by us in various cases cited by the defendants. These comparisons were introduced to prove the reasonableness of the rates assailed on cypress lumber from Lake Charles to the destinations involved. In our opinion, they indicate that the rates assailed are unreasonable.

Alexandria and Boyce, La., are located within the zone from which the defendants allege that the rates on pine lumber to Texas are depressed by reason of low rates from points in eastern Texas to the same destinations. The rates on pine lumber to Texas destinations from these points and from Lake Charles, La., and Orange, Tex., do not appear unduly low, when compared with other rates on pine lumber given in defendants' exhibits. White Castle and Harvey, La., are located within the cypress producing region in southeastern Louisiana from which rates on lumber are not affected by the Texas competition above referred to. The rates on cypress lumber from these points and also the rates on all species of lumber from Omaha

and St. Louis shown in defendants' exhibits are, with a few exceptions, lower for like distances than the rates here under complaint on cypress lumber from Lake Charles to Texas destinations and in most instances are no higher than rates on pine lumber from Lake Charles to the Texas destinations named in the complaint. The unreasonableness of the rates on cypress lumber from Lake Charles to Texas destinations, which range from 13 $\frac{3}{4}$ cents for a distance of 123 miles to 22 $\frac{3}{4}$ cents for 418 miles, is also apparent when comparison is made with the rate of 14 cents per 100 pounds for an average haul of 380 miles from the southwestern pine blanket to Memphis, Tenn., approved in *Wisconsin & Arkansas Lumber Co. v. St. L., I. M. & S. Ry. Co.*, 33 I. C. C., 33.

Equal rates on pine and cypress lumber are in most instances maintained from the cypress producing regions of Louisiana and Florida to destinations other than in Texas. In instances where higher rates are maintained on cypress lumber, they seldom exceed the pine rates by more than 1 or 2 cents per 100 pounds. In the absence of competitive influences not common to both pine and cypress, differences in value constitute the only possible ground afforded by the present record for higher rates on cypress lumber than on pine.

The record shows that the mill run prices f. o. b. mill of yellow pine from representative mills in Louisiana during 1914 ranged from \$10.25 to \$15.65 and that the prices for different grades of yellow pine ranged from \$7 to \$30 per 1,000 feet board measure. The average mill run price for 1914 of cypress in Louisiana is given in United States Department of Agriculture Bulletin No. 272, introduced in evidence by the defendants, as about \$23.50 per 1,000 feet, which it is stated is doubtless higher than for the whole cypress region. The same bulletin at page 18 gives the range of values of different grades of cypress as follows:

* * * Pecky cypress, for which there is a good market, usually brings the millmen \$8 to \$10 per thousand; commons, from \$10 to \$20; shop, \$20 to \$25; selects, \$28 to \$35; and clears, \$34 to \$45. These are round figures, but suffice to show the range of values. * * *

We do not believe that the differences in mill-run values or the differences in the range of values of different grades of pine and cypress lumber justify differences in rates. We find that the rates assailed, for the transportation of cypress lumber and shingles in straight or mixed carloads or mixed with pine lumber and shingles, in carloads, were unjust and unreasonable in so far as they exceeded the rates contemporaneously applicable on pine lumber from Lake Charles to the same points.

Subsequent to the bringing of this complaint the principal defendant carriers were brought under federal control. On June 25,

51 I. C. C.

1918, the rates assailed were increased by the Director General of Railroads in the exercise of powers conferred upon the President by the federal control act approved March 21, 1918. This increase was made over routes embracing the lines of those defendants not brought under federal control by authority of our Fifteenth Section Order No. 666. An opportunity was afforded complainants to amend the complaint by making the Director General of Railroads a party defendant. As no amendment was filed no finding or order with respect to the rates which he initiated can be made. The same reasons, however, which prompted the finding that the rates assailed were unjust and unreasonable lead us to advise the Director General that the present rates for the transportation of cypress lumber and shingles in straight or mixed carloads, or mixed with pine lumber and shingles, in carloads, be revised so as not to exceed rates contemporaneously applicable on pine lumber from Lake Charles to the same points.

We further find that complainants made the shipments as described and paid and bore the charges thereon, that they have been damaged to the extent of the difference between the charges paid and those that would have accrued at the rates herein found reasonable, and that they are entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record. The complainants should therefore prepare a statement in accordance with rule V of the Rules of Practice, also specifying the date on which the charges were paid, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

Since the carload minimum for cypress lumber is the same as for pine lumber from Lake Charles to the destinations involved, complainants were not damaged more than is indicated above by reason of the application to the shipments which moved during the period indicated of the mixed carload rule given above.

Disposition of this case was delayed on account of the *Lumber Investigation*, Docket No. 8131.

No. 9847.

BUCKER-FULLER DESK COMPANY

v.

SOUTHERN PACIFIC COMPANY ET AL.

Submitted December 20, 1917. Decided December 4, 1918.

Rate legally applicable on hollow-wall steel safes with safe interiors, in less than carloads, from Marietta, Ohio, to San Francisco, Cal., not shown to have been unreasonable or unduly prejudicial. Complaint dismissed.

Robert J. McGahie for complainant.

Elmer Westlake for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HARLAN, AND HALL.

By DIVISION 3:

The complainant, a corporation dealing in office equipment at San Francisco, Cal., alleges by complaint, seasonably filed, that the charges collected on two less-than-carload shipments, one consisting of nine steel safes and the other of two steel safes with their interiors, forwarded January 20 and June 10, 1915, respectively, from Marietta, Ohio, to San Francisco and there delivered on February 5 and July 1, 1915, respectively, were illegal, unreasonable, and unduly prejudicial to the extent that they exceeded the charges that would have accrued at a rate of \$2.20 per 100 pounds. It asks for reparation and the establishment of a reasonable rate. Rates are stated in amounts per 100 pounds.

The shipments consisted of so-called safe cabinets which resemble ordinary iron safes but differ therefrom in that they have inner and outer steel walls with an intervening dead-air space which renders the safes fireproof. They are of much lighter weight per cubic foot than solid-wall safes, are much easier to handle, and can be loaded in cars in tiers.

The shipments weighed 8,520 and 625 pounds, respectively, and moved over defendants' lines. Charges were assessed on the first shipment in the sum of \$264.12 and on the second in the sum of \$19.38 at the second-class rate of \$3.10, governed by the western classification. The third-class rate of \$2.60, effective on iron and steel safes weighing 5,000 pounds or less each, was legally applicable and the shipments were overcharged \$42.60 and \$3.13, respectively. These overcharges should be promptly refunded. On March 15, 1916, the second-class rating was made applicable to these safes.

Prior to November 15, 1914, there were in effect less-than-carload commodity rates of \$2 on iron and steel safes, etc., weighing 5,000 pounds or less each, which applied on these safes, and \$2.20 on steel vault furniture and fittings, viz, filing cabinets or cases. On that date these rates were canceled. Effective October 18, 1915, the rate of \$2.20 on steel vault furniture and filing cabinets was restored and its application extended to include iron, but not steel, safes, regardless of weight. On March 15, 1918, this rate was increased to \$2.53.

The defendants rely upon *Railroad Commission of Nevada v. S. P. Co.*, 19 I. C. C., 238, to justify the reasonableness of the present second-class rating; and contend that these safes should take a higher rating than solid-wall safes weighing less than 5,000 pounds each on account of the lighter weight per cubic foot.

We find that the third-class rate of \$2.60 per 100 pounds legally applicable on these shipments is not shown to have been unreasonable or unduly prejudicial. The present rates are those initiated by the Director General of Railroads under the federal control act. The Director General has not been made a party defendant. The record, therefore, affords no basis for a finding and order as to the future rate or rating. The complaint will be dismissed.

51 I. C. C.

No. 10188.¹

CITY OF EAST LIVERPOOL, OHIO,
v.
STEUBENVILLE, EAST LIVERPOOL & BEAVER VALLEY
TRACTION COMPANY.

Submitted November 13, 1918. Decided December 7, 1918.

Single-trip fare of 10 cents and commutation fare of \$1 for 14 rides between East Liverpool, Ohio, and Chester, W. Va., approved. Complaints dismissed.

R. G. Thompson for city of East Liverpool; *E. A. Hart* for city of Chester; and *J. P. Kay* for trades and labor, East Liverpool.

N. B. Billingsley, J. H. Brooks, and Agnew Rice for defendant.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

The cities of East Liverpool, Ohio, and Chester, W. Va., complain in these proceedings of the fares charged by the Steubenville, East Liverpool & Beaver Valley Traction Company for the transportation of passengers between those points. Prior to April 1, 1918, the fare was 5 cents; on that date the single-trip cash fare became 10 cents and a commutation fare of \$1 for 14 trips, or slightly over 7.1 cents per trip, was established. These fares are alleged to be unjust and unreasonable and, in so far as the city of Chester is concerned, unduly prejudicial to the citizens thereof.

Counsel for the complainants are divided in their views as to the relief which may be had through this Commission. It is alleged on behalf of the city of East Liverpool that that portion of the defendant's line extending between East Liverpool and Chester is operated as a street electric railway and is not subject to the act to regulate commerce. It also is alleged that by the terms of the franchise under which the right was granted to construct and operate a railway in East Liverpool the defendant is required to maintain a rate of fare not in excess of 5 cents. The city of Chester, on the other hand, alleges the jurisdiction of this Commission and seeks an order prescribing just and reasonable fares for the future. An alle-

¹ The report also embraces No. 10188 (Sub-No. 1), City of Chester v. Same.
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gation of a departure from the provisions of section 4 of the act was not pressed at the hearing and will not be considered herein.

Chester is a town of between 3,000 and 4,000 inhabitants situated on the east, or south, bank of the Ohio River in the extreme northern part of West Virginia. East Liverpool, with a population of about 23,000, is on the Ohio side of the river directly opposite Chester. These cities are connected by an electric railway owned and operated by the defendant, which extends from the so-called "diamond" in East Liverpool over a steel suspension bridge 1,700 feet in length across the Ohio River to and through Chester, a distance of 2.9 miles. Pottery plants and other manufacturing establishments in both points employ a considerable number of workmen who use the railway daily in going to and returning from their work, and it is largely in their behalf that these complaints were filed.

The Steubenville, East Liverpool & Beaver Valley Traction Company was formed in 1917 by the consolidation and merger of the Steubenville & East Liverpool Railway & Light Company, which owned and operated an electric railway from a point in Steubenville, Ohio, to the boundary line between Columbiana and Jefferson counties in Ohio; the East Liverpool Traction & Light Company, which owned and operated an electric railway from the boundary line above mentioned through Columbiana county to a point on the Ohio-Pennsylvania state line, including street railways in East Liverpool and the line to Chester; and the Ohio River Passenger Railway Company, which owned and operated an electric railway from the Ohio-Pennsylvania state line to Vanport, Pa. The line between East Liverpool and Chester was constructed about 20 years ago and for several years was operated independently. In 1905 it was acquired by the company then operating the street railway in East Liverpool, and the two properties, including also the bridge over the Ohio River, were consolidated under the name of the East Liverpool Traction & Light Company. Subsequently, in 1911, a corporation known as the Tri-State Railway & Electric Company took over by lease or otherwise the properties of the Steubenville & East Liverpool Railway & Light Company, the East Liverpool Traction & Light Company, and the Ohio River Passenger Railway Company with the intention of forming a through line of railway between Steubenville and Vanport. The new company soon became financially involved and was placed in the hands of receivers, who, under orders of the court, delivered the properties to the lessors on March 31, 1914. After the termination of the receivership proceedings the companies were again independently operated but were continuously in default of the interest on their bonded indebtedness and were unable to meet their other obligations. Finally, in an effort to save them, the present com-

pany was organized with a capital stock of \$4,600,000 par value, divided into 26,000 shares of preferred stock and 20,000 shares of common stock. A bond issue of \$3,000,000 was authorized, of which \$1,600,000 was offered to the public and \$1,400,000 was reserved in the treasury.

It is argued by counsel for the city of East Liverpool that the Chester line is in fact a street passenger railway falling within that class of street railways which are excluded from the operation of the interstate commerce act under the decision of the Supreme Court of the United States in *Omaha Street Ry. v. Int. Com. Comm.*, 230 U. S., 324. It appears that this property was originally incorporated under the laws of West Virginia as a street railway, but it is now operated as a part of an interstate carrier. The Steubenville, East Liverpool & Beaver Valley Traction Company owns 42.12 miles of road in Ohio, 11.2 miles in Pennsylvania, and 2.09 miles in West Virginia, as shown by the annual reports of the merged companies. It transports freight and passengers over its main line between Steubenville and Vanport, but does not handle commercial freight over the Chester branch. It files its tariffs with the Commission and publishes through passenger fares between Chester and all points in Ohio and Pennsylvania which it serves, and at times operates cars from its Pennsylvania stations through to Chester. It is subject to the provisions of the act to regulate commerce. *Jurisdiction over Urban Electric Lines*, 33 I. C. C., 536; *City of Steubenville, Ohio, v. Tri-State R. & E. Co.*, 38 I. C. C., 281. The Chester branch is an integral part of defendant's railway, and the interstate fares thereover are within the control and regulation of the Commission.

The city of East Liverpool also directs particular attention to an ordinance passed by the city council in November, 1896, which provided, among other things, that the rate of fare to be charged over any street railway thereafter constructed in East Liverpool should not exceed 5 cents for a 10-mile trip. A subsequent ordinance, passed in March, 1897, authorizing the construction of that part of the Chester line which lies in the city of East Liverpool, was made subject to the earlier ordinance restricting the fares to be charged. It is contended that the acceptance of these ordinances by defendant's predecessors created contracts with the city, the provisions of which have been contravened by the maintenance of rates of fare in excess of 5 cents. The defendant concedes that the franchise granted to its predecessors prohibits it from charging more than a 5-cent fare over its lines in East Liverpool, but contends that this restriction can have no force or effect in so far as the line in and to Chester is concerned. The charge of undue prejudice urged by the

city of Chester arises from the maintenance of this 5-cent fare over the defendant's East Liverpool lines.

The contention urged by the complainant is similar to that considered by the Commission in *St. Louis, Mo.-Illinois Passenger Fares*, 41 I. C. C., 584. An ordinance passed by the municipal assembly of the city of St. Louis provided that the fare to be charged by the St. Louis Electric Terminal Railway Company between St. Louis and Granite City and intermediate points in the state of Illinois should not exceed 5 cents. Subsequently the railway company undertook to increase the fare to 10 cents. In considering the effect of the ordinance upon the right of the carrier to increase its fares the Commission said, at pages 590 and 591 of its report in that proceeding:

However indisputable may be the right of a city to grant or to withhold from quasi-public corporations the use of its highways it can not indirectly control or regulate interstate commerce by attaching conditions to its franchises. The same conclusion must be reached if the municipal ordinance and the acceptance of its conditions by the terminal company be viewed as a contract between the city and the railway company. * * * Admitting the correctness of the city's contention that a contract between a common carrier and a municipality differs in kind from a private contract between a carrier and a shipper for the establishment of a preferential rate, it is nevertheless clear that both kinds of contracts must be disapproved to the extent that they seek by special agreement to require the maintenance of rates or fares which are unreasonable, discriminatory, or unremunerative, or to the extent that they seek to lodge in other bodies the jurisdiction over interstate rates and fares which has been expressly conferred upon this Commission by federal law.

The ordinances referred to by the complainant can not, therefore, be held to preclude the defendant from maintaining rates of fare in excess of 5 cents for the interstate transportation of passengers between East Liverpool and Chester.

The defendant maintains that the former 5-cent fare was not sufficient to yield a fair return upon the value of the property devoted to this use. It appears that the bridge was built in 1896 at a cost of \$25,000 in cash, \$200,000 in bonds, and \$50,000 in stock, a total of \$275,000, assuming the bonds and stock to have been worth par. Later additions increased the cost somewhat. Its cost of reproduction new, based upon prices for material and labor prevailing in the summer of 1916, was estimated by an engineer experienced in the construction of similar bridges to be \$338,880, exclusive of such items as taxes and interest during the period of construction and other expenses of a special and incidental nature, which, if incurred, would be properly chargeable to the cost of the property.

The valuation placed upon the bridge by the defendant is \$441,415, computed as follows: Cost of reproduction new, \$338,880; real estate acquired for approaches, \$23,000; 7½ per cent for interest running

over a 3-year period of construction, including interest on the value of the real estate, \$27,141; 6½ per cent for taxes during construction, contingencies, and administration, totaling \$23,522; and expenses for promotion at 7 per cent, based on the sum of the above items, \$28,872. The accounting rules of the Commission provide that interest and taxes during construction, expenses incident to organization, including fees paid to promoters, and other general expenditures may be included in the cost of the property, but the amounts claimed by the defendant are excessive. In the recent report upon the valuation of the *Texas Midland Railway*, 1 Val. Rep., 1, the Commission reached the conclusion that 1½ per cent on all items chargeable to cost of road, except land, would be a fair estimate to allow for these incidental expenses, and that an allowance of 6 per cent per annum for one-half the period of construction, plus 3 months, could properly be added as representing the interest paid during construction. Based on these allowances, and assuming the cost of reproduction new of the bridge to be \$338,880, the incidental or general expenses, excluding interest, would approximate \$5,083 instead of \$52,394, as claimed. Adding the sum estimated by the defendant as representing interest during construction, which is perhaps not excessive, the cost of reproduction of the bridge may be placed for the purpose of this proceeding at \$394,104, inclusive of the value of the real estate.

The estimated value of the East Liverpool-Chester line, excluding the bridge, at the time of its acquisition by the present company was \$409,944, made up as follows: Roadway and track, \$215,449; distribution system, \$8,602; the value of an amusement park of some 42 acres in Chester, \$115,393; and an amount of \$70,500 representing the proportion of the total value of equipment, material and supplies, tools, etc., owned by the East Liverpool Traction & Light Company chargeable to the Chester branch. Deducting the value of the park referred to, the claimed value of the property devoted to transportation uses was \$294,551. Adding to this amount the above assumed reproduction value of the bridge produces a total for the Chester line of \$688,655.

The average gross earnings for the years 1915, 1916, and 1917 were \$73,247.42, including \$17,138.02 derived from the operation of the bridge. The operating expenses of the Chester branch are not kept separate from the expenses incurred on other portions of the East Liverpool division, which is that part of the defendant's line formerly owned by the East Liverpool Traction & Light Company. The defendant, in estimating the expenses, assumed that the cost of operating the Chester branch would not differ from the cost of operating other portions of the East Liverpool division and there-

fore based its estimate on the ratio of the gross earnings of the Chester line to the earnings of the East Liverpool division as a whole, applying the percentage so obtained to the total cost of operation. This method gave an average operating expense for the period mentioned of \$41,123.19, to which was added the actual expense of maintaining the bridge, \$7,674.08, making the total cost of operation \$48,797.27. The average net earnings, less taxes, were \$20,869.75, equal to 3.03 per cent on a valuation of \$688,655.

The complainants properly contend that in determining whether a fare of 5 cents is sufficient to yield a reasonable return on the value of the property due allowance should be made for depreciation. As stated, the bridge has been standing since 1896 and its remaining life is said not to exceed 15 years. The complainants therefore argue that the present value of the bridge is but fifteen thirty-sevenths of its value new. Likewise, the estimated remaining life of the railway is 25 years, and figuring depreciation from 1905, when, according to the complainants, the railway was reconstructed, would leave its present value twenty-five thirty-eighths of its original cost. Assuming the cost of the bridge less the real estate to be \$371,000 and of the railway property exclusive of the park to be \$294,500, the depreciated values would be \$150,000 and \$194,000, respectively. Including the real estate but not the park, the depreciated value of the property devoted to transportation uses would therefore approximate \$367,000, with no allowance for salvage or the scrap value of the material replaced. The average net earnings, less taxes, for the years 1915 to 1917 are less than 6 per cent on a valuation of \$367,000.

The companies operating between East Liverpool and Chester have been unable in the past to accumulate a reserve with which to replace the property when it becomes worn out through age and use. It would require an annual investment of \$16,313.68 at 4½ per cent for 15 years to provide a sum sufficient to replace the bridge, and a reserve for replacement of the railway would not be far short of this. The defendant insists that unless it is permitted not only to maintain its present fares on the Chester branch but also to increase those on other portions of its railway the time will soon arrive when it will be unable to continue in operation.

The estimates of values and costs of operation herein stated are unsatisfactory in many particulars, but an examination of the whole record makes it reasonably clear that a rate of fare in excess of 5 cents is necessary if satisfactory service is to be maintained in the future. The present single-trip fare of 10 cents and the commutation fare of 7.1 cents are the same as those considered and approved by the Commission in *City of Steubenville, Ohio, v. Tri-State R. & E. Co., supra*, for the transportation of passengers between Steuben-

ville and Follansbee, W. Va. Follansbee is 2.9 miles from Steubenville and is on the West Virginia side of the Ohio River. The Commission in that case approved a single-trip fare of 10 cents between those points and prescribed a commutation fare of \$3.70 for 52 rides, or 7.1 cents per trip.

The record warrants the conclusion that the fares under consideration are not unreasonable or unduly prejudicial and the complaints should therefore be dismissed.

CLARK, Commissioner:

The foregoing proposed report of the examiner was served upon the parties. Certain exceptions thereto were filed by complainant and replied to by defendant. Oral argument was waived by all parties.

Complainant excepts to the examiner's conclusion that the Chester line is now operated as a part of an interstate carrier. As shown in the report, the Chester line was, on November 1, 1917, merged with other lines and the defendant began operating them as an interstate system under a tariff of interstate fares duly filed with this Commission. The fact that ordinarily a passenger from a point on the interurban line destined to Chester must change cars can not affect the status of the defendant as an interstate carrier. Through fares are provided between Chester and points in Ohio and Pennsylvania served by defendant.

Complainant excepts to the conclusion that the Chester line is subject to the provisions of the act to regulate commerce and to the jurisdiction of the Commission. We think that the facts stated in the report fully sustain this conclusion of the examiner.

Complainant excepts to the finding that the ordinance of the city of East Liverpool can not preclude defendant from maintaining a fare in excess of 5 cents for the interstate transportation of passengers between East Liverpool and Chester. Manifestly a city ordinance could not stand as a bar to the exercise of the power vested in Congress and delegated by it to this Commission to regulate the interstate fares. The fact that the city ordinance was passed and contractual relations were entered into thereunder many years ago can give that ordinance and those contractual relations no more validity as a bar to our jurisdiction than if they had been recently adopted and entered into.

Complainant excepts to the acceptance of certain of the figures which are used in an attempt to reach from the record the best estimate deducible therefrom of the value of the property devoted to the public use. The examiner's report makes clear the use made and the weight given by him to these figures. His conclusions are

strengthened by the fact that he omitted very substantial increases in wages somewhat recently granted to defendant's employees and which necessarily reduce the net income from operation.

As shown in the examiner's report, the Chester line was acquired by and became a part of the East Liverpool Traction & Light Company in 1905. In 1911 the East Liverpool Traction & Light Company became a part of the Tri-State Railway & Electric Company. In 1914 the several properties that had been merged in the Tri-State company, including the East Liverpool Traction & Light Company, were, under decree of the court, returned to the lessors from whom they had been acquired by the Tri-State company and were again separately and independently operated. In 1917 defendant, Steubenville, East Liverpool & Beaver Valley Traction Company, was formed and the East Liverpool Traction & Light Company's lines and property became a part thereof. The first interstate fares filed with this Commission by defendant are the ones here complained of. They are higher than those which had previously been in effect on the independent lines which were consolidated to form the defendant company. Under these facts there is room for difference of opinion as to whether or not the provision of our act which casts upon the carrier the burden of justifying fares increased since January 1, 1910, applies. It is, however, unimportant in this case because the defendant accepted and assumed that burden and has, we think, justified the fares complained of. The complainant has failed to demonstrate that they are unreasonable or unduly prejudicial.

In its exceptions complainant suggests that if it be assumed that the Commission has jurisdiction in the premises and that fares higher than those contended for by complainant are found justified, they should be something less than those complained of. Defendant attempted to justify the fares complained of. Complainant insisted that we had no jurisdiction in the premises and that the limitations of the ordinance of the city of East Liverpool fixed the maximum fare that might be charged between East Liverpool and Chester. Neither side offered any evidence as to the reasonableness or the reasons for any level of fares intermediate between those complained of and those contended for by the complainant.

The report and conclusions of the examiner are adopted as the report and conclusions of the Commission. An order will be entered dismissing the complaints.

51 I. C. C.

No. 10080.

R. T. FELTUS LUMBER COMPANY ET AL.

v.

GREAT NORTHERN RAILWAY COMPANY ET AL.

Submitted November 21, 1918. Decided December 7, 1918.

1. Rules under which carriers refuse to accept orders for cars for the carriage of lumber, of cubical capacity of less than 2,400 cubic feet, or of more than certain specified cubic capacity, while tariffs name graduated minima for cars of less or greater capacity when tendered for carriers' convenience, held unreasonable and unduly prejudicial.
2. The publication of graduated carload minima implies an obligation upon carriers to furnish, upon reasonable notice, cars of corresponding capacity.
3. Failing, upon reasonable notice, to furnish equipment of the size that may be lawfully ordered, carriers are bound to protect by unambiguous rules the appropriate minima applicable to the size of the equipment ordered.
4. Subject to the observance of the above requirements, the minima here assailed are not found unreasonable or otherwise unlawful.
5. Rule withdrawing from the carriage of lumber cars of a less capacity than 1,651 cubic feet justified.

John S. Burchmore for complainants.

R. J. Knott and *Donald D. Conn* for Western Pine Manufacturers' Association, intervener.

Charles Donnelly and *B. W. Scandrett* for transcontinental lines.

J. N. Davis for Chicago, Milwaukee & St. Paul Railway Company.

R. Walton Moore for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

DANIELS, *Chairman*:

This complaint was filed by two incorporated lumber dealers, one located at Chicago, Ill., and the other at St. Louis, Mo., and a lumber producing corporation operating at Chehalis, Wash. The Western Pine Manufacturers' Association, intervener, comprising about 60 mills located in the inland empire, makes common cause with the complainants. They allege that the tariff rules, published by agent R. H. Countiss, governing carload minimum weights of lumber shipped from points in Oregon, Washington, Idaho, and Montana to destinations east of the Rocky Mountains, purporting to have taken effect September 24 and November 12, 1917, successively, were and

are null and void, or, in the alternative, violative of sections 1, 2, and 3 of the act. The prayer is that the tariffs in question be stricken from the files of the Commission as of the dates they were received, or that defendants be required to publish and maintain rules that are not unreasonable or otherwise unlawful. On September 19, 1918, an amendment to the original complaint made the Director General a party. A tentative report drafted by the examiner was served upon the parties. Exceptions were filed and the case came on for oral argument before Division 2 of the Commission.

Two preliminary issues may be disposed of before discussing the case on its merits.

Complainants allege that the tariff supplements containing the rules assailed were illegally filed, in contravention of the fifteenth section of the act as amended August 9, 1917, in that the Commission had not given prior lawful approval to their filing. As a matter of administrative necessity, and in the exercise of its lawful discretion, and without foreclosing any aggrieved shipper of his remedy under the act, the Commission accorded a blanket approval to tariffs forwarded for filing prior to August 15, 1917. The supplements effective September 24, 1917, were forwarded prior to the date last mentioned, and all were therefore legally filed.

The defendants contend that the issues in the case are confined to changes effected or new features introduced by the rules assailed, and may not properly extend to provisions therein which were in force prior to September 24, 1917. Section 7 of the complaint, however, assails the rules as unjust and unreasonable, unjustly discriminatory, and unduly preferential, in violation of sections 1, 2, and 3 of the act, without reference to the date of their establishment. Defendants' suggested delimitation of the issues involved is unsound.

Two minor matters may also be disposed of, preliminary to passing upon the complaint proper:

The supplements effective November 12, 1917, somewhat liberalized the rules which prevailed on and after September 24, 1917. The carriers have expressed their willingness to adjust their revenue on the basis which became effective at the later date. This adjustment or such modified adjustment as required by our findings herein should be made.

Cars with a minimum capacity of less than 1,651 cubic feet are to be withdrawn from the carriage of lumber traffic involved in this case. These cars are antiquated and even dangerous for transcontinental traffic. The discontinuance of their use for this traffic, together with the minimum weights formerly quoted therefor, has been justified.

Since 1906 eastbound transcontinental traffic in lumber and its products from the north Pacific coast and the inland empire has been subject to carload minima based on the cubic foot capacity of the equipment multiplied into estimated weights per cubic foot of lumber and its products, respectively. These carload minima apply when the car is not loaded to capacity. They were left unchanged in the supplements here under attack.

Prior to September 24, 1917, the tariff rules provided that where cars were loaded to full visible capacity actual weights would apply, subject to stated minima graduated according to the length of the car. These minima are set out in the margin.¹ The rules as changed September 24, 1917, substituted new minima when cars are loaded to full visible capacity. These new minima are in general 80 per cent of the capacity minima described in the preceding paragraph. The new minima, however, fall in no case below the full visible capacity minima effective prior to September 24, 1917.

For example, prior to September 24, 1917, for a car of 2,244 cubic capacity and 33 feet in length the minimum applicable on pine lumber when the car was not loaded full was 45,500 pounds. When loaded full, the governing minimum was 30,000 pounds. Since that date for the same car the minimum applicable when the car is not loaded full is still 45,500 pounds, but when loaded full the governing minimum is 37,000 pounds.

It is apparent that cars loaded to full visible capacity become subject to rates based on higher minima generally than were previously in effect.

The rules assailed made another important change by providing that carriers would not accept orders for cars of a capacity less than 2,400 cubic feet. Prior to September 24, 1917, carriers held themselves out to accept orders for cars of 1,651 cubic capacity and upward. Under the rules assailed herein, shippers on the Great Northern may order cars from 2,400 to 2,689 cubic capacity; on the Northern Pacific, from 2,400 to 2,990 cubic capacity; and on the Union Pacific system from 2,400 to 3,050 cubic capacity.

¹ Shingles, straight carloads or mixed carloads of shingles and other articles taking shingle rates: Closed cars, 34 feet or less in length, 20,000 pounds; closed cars, over 34 feet but not over 36 feet 6 inches in length, 28,000 pounds; closed cars, over 36 feet 6 inches in length, 34,000 pounds.

Lumber, poles, piling, and timbers of cottonwood, fir, hemlock, larch, or spruce and articles manufactured therefrom, except fence posts, straight carloads: Closed cars, under 36 feet in length, 30,000 pounds; closed cars, 36 feet and over in length, 40,000 pounds.

Lumber, poles, piling, and timbers of pine and articles manufactured from pine, * * * also cottonwood box shooks in mixed carloads with same: Cars of less than 36 feet in length, 24,000 pounds; cars 36 feet and over in length, 30,000 pounds.

Lumber, poles, piling, and timbers of cedar or juniper and articles manufactured from cedar or juniper: 24,000 pounds.

Fence posts and cottonwood box shooks, straight carloads: 24,000 pounds.

Despite the carriers' disclaimer of liability to furnish after September 24, 1917, cars of less than 2,400 cubic capacity, or of more than certain specified cubic capacity, they continue to publish minima, both capacity minima and full visible loaded minima, for cars of lower capacity down to 1,651 cubic feet and for cars of greater cubic capacity than the maximum above which shipper may not order, when such smaller cars or such larger cars are tendered to the shippers for the carriers' convenience.

Prior to September 24, 1917, the rules provided that the carriers, if unable to furnish a car of the size that might then be lawfully ordered—that is, not less than 1,651 cubic capacity, might furnish a larger car, protecting thereon the minimum applicable to the size of the car ordered. This obligation was eliminated by the rules effective September 24, 1917, but was restored, effective November 12, 1917, although the minima protected now cover only cars of 2,400 cubic capacity or over.

The reason for the changes in the rules assailed herein was the carriers' desire to obtain greater loading for their cars and to prevent waste of equipment. It is admitted that certain shippers had previously ordered equipment of less capacity than was necessary for their intended carload shipments. Anticipating that the carriers would set in cars of greater capacity than those ordered, these shippers loaded their shipments into the larger cars and claimed the lower minima applicable to the size of the car ordered.

The issues in this complaint are essentially: (1) the use of car minima based on cubic capacity; (2) the carriers' refusal to accept orders for cars of less than 2,400 cubic capacity, or of more than certain stated cubic capacities while holding themselves free at their convenience to tender smaller cars and naming the minima applicable thereto; (3) the increase in minima applicable to cars loaded to full visible capacity; (4) the applicable minima when the carrier for its convenience furnishes a larger car than is ordered.

The question of the propriety of lumber minima based on cubic capacity will not be determined upon this record. It more properly arises for determination in the general investigation, *Lumber Carload Minima*, Docket No. 10128. While cubic minima are indirectly attacked in this proceeding, complainants would be satisfied by a reinstatement of the earlier rules which involve cubic minima. It may, however, be said in passing that nothing in this record goes to justify the cubic capacity basis for lumber carload minima. It prevails nowhere else than from the north Pacific coast and the inland empire. It appears inappropriate for an article like lumber which is generally cut in various standard lengths. It is often misleading in that cars of greater cubic volume have less stowage capacity for lumber of certain standard sizes than cars of smaller

cubic volume. It involves complex and complicated rules for its definition and great practical difficulty in application. While for articles that move in bulk like grain or liquids, cubic capacity minima may be fully warranted, the record here discloses little to commend and much to discredit the use of these minima for lumber.

The reason for carriers' denial of shippers' right to order cars of less than 2,400 cubic capacity or of more than the specified capacities is to prevent waste of equipment and to promote full loading of equipment. These are both laudable aims but their accomplishment may not be attempted by means of unlawful or unreasonable requirements. In a long series of cases the Commission has considered the question of applicable carload minima. *Pacific Purchasing Co. v. C. & N. W. Ry Co.*, 12 I. C. C., 549; *American Lumber & Mfg. Co. v. S. P. Co.*, 14 I. C. C., 561; *General Chemical Co. v. N. & W. Ry. Co.*, 15 I. C. C., 349; *Beggs v. Wabash R. R. Co.*, 16 I. C. C., 208; *Kaye & Carter Lumber Co. v. M. & I. Ry. Co.*, 16 I. C. C., 285; *Jobbins v. C. & N. W. Ry. Co.*, 17 I. C. C., 297; *Springer v. E. P. & S. W. R. R. Co.*, 17 I. C. C., 322; *Corn Belt Meat Producers' Asso. v. C. B. & Q. R. R. Co.*, 17 I. C. C., 533; *Noble v. B. & O. R. R. Co.*, 20 I. C. C., 72; *Minneapolis Threshing Machine Co. v. C. M. & St. P. Ry. Co.*, 21 I. C. C., 181; and *Noble v. B. & O. R. R. Co.*, 22 I. C. C., 432.

The Commission has consistently held that "where a carrier by its tariffs specifies a certain minimum for a car of a certain size it thereby tenders to the public that rate of transportation;" and that where for its own convenience it tenders a car of different capacity from that ordered by the shipper the carrier must protect the minimum applicable to the car ordered.

While this general principle has been consistently held, two modifications in its application have been allowed. Where a car ordered is of unusual character or size, the Commission has approved the requirement that reasonable advance notice may be required of the shipper. *Noble v. B. & O. R. R. Co.*, 22 I. C. C., 432. We have also said in *General Chemical Co. v. N. & W. Ry. Co.*, 15 I. C. C., 349, that "it lies within the power of carriers to protect themselves against unreasonable demands by shippers under such a rule by confining its operation, under proper notice in their tariffs, to cars having a marked capacity between certain maximum and minimum limitations." Does the requirement here in effect fall within the reasonable limits of a rule such as that indicated in the last citation? We do not think it does, for the following reasons, among others: There is no suggestion in the case above cited that carriers publishing such a rule should at the same time reserve the right to tender cars of dimensions falling outside of the limits prescribed by the rule. What the carriers here attempt is not merely to exclude by appropriate rule the use of certain specified equipment, but to exclude the

shipper from the right to demand certain equipment while reserving to the carriers the right to tender such equipment subject to minima prescribed therefor. Furthermore, the equipment which is put beyond the shipper's right to demand comprises over 20 per cent of the defendants' equipment, and comprises almost half of the equipment supplied to certain shippers. The practice here in vogue is clearly unreasonable in that it denies the shipper the right to order and use cars which the carrier reserves the right to tender and does actually tender in many cases. It certainly can not be termed a just arrangement which accords to carriers for the convenience of their business the right to tender cars which the shipper for the convenience of his business may not lawfully demand. The practice is also unduly preferential of those shippers to whom, by chance or choice, a small car is allotted; and unduly and unreasonably prejudicial and disadvantageous to competing shippers offering for shipment substantially the same carload quantities to whom, by chance or choice, cars of greater capacity are assigned. We are not unmindful of the difficulty of devising a rule which shall at the same time conserve equipment, promote reasonably full loading, and avoid discrimination between shipper and shipper. In the *Noble Case*, cited above, we said:

There are undoubtedly difficulties in the way of using this small equipment. It would, without question, be easier for the railroad if the shipper could be required to bear the burden of these difficulties, but inasmuch as they are created by the carrier we are unable to say why they should rest upon the shipper.

It is possible that the carriers might decline to utilize for this traffic cars below 2,100 cubic feet capacity. The exclusion of cars below this limit for transcontinental lumber traffic would affect only a small percentage of the cars now available therefor. If a shipper could not order a car below 2,100 cubic feet capacity but could lawfully order a car of that size and failed to load the car full, the minimum applicable would be 42,500 pounds; and if the car were loaded to full visible capacity the applicable minimum would be approximately 34,000 pounds. In case the unusual ranges of equipment are less easy to provide on short notice, carriers might require reasonable advance notice for cars of the extreme capacities. Whatever arrangement be devised, we find that it is unlawful and unreasonable for carriers to disclaim liability to furnish on shippers' demand cars of given capacity and at the same time to insist upon their right for their own convenience to tender cars of such capacity as the shipper is forbidden under the tariffs lawfully to order.

The exhibits submitted by the carriers covering shipments moving from the north coast and the inland empire after the establishment

of the rules assailed, but in certain cases also moving in August, 1917, prior to the establishment of these rules, demonstrate that in a majority of instances the minima based on cubic capacity are exceeded by the actual weight, and that with but relatively few exceptions where cars are loaded to full visible capacity the actual weight exceeds the minima now in effect under the rules. We, therefore, are unable to find that the applicable minima *per se* under the rules are unjust or unreasonable, and this finding is reinforced by the consideration that the equipment used from this lumber originating region is in general larger than lumber equipment used throughout the country generally. Subject, therefore, to the observance of such qualifications as have been indicated in the previous part of this report, we are inclined, at least upon this record, to hold the existing minima not unreasonable. It is true that the exhibits cited cover shipments made at the time when great activity prevailed in the lumber industry. It may also be true that during this period shippers preferred, where possible, to fill their larger rather than their smaller carload orders. But the fact that the minima set in the tariffs now effective are so generally reached warrants the finding that *per se* these minima are justified.

The rules assailed provide that where the carriers for their convenience furnish a larger car than ordered, they will protect the minimum for the size ordered provided the load could have been stowed in a car of the capacity ordered. The difficulty with this rule is that it is ambiguous. There are two minima applicable to the car ordered, the one, based upon its cubical capacity and applying when the car is not loaded full; the second, which is approximately 80 per cent of the first, and applicable when the car is loaded to full visible capacity. Where the carriers for their convenience furnish a larger car than was ordered, two questions arise: First, could the load have been stowed in a car of the capacity ordered; second, would the load have filled the car ordered to its full visible capacity? It may be remarked in passing that the answer to this latter question will, in certain instances, depend upon the dimensions of the car ordered. Even when the cubic volume of two cars is the same the stowage capacity for lumber of given dimensions may be greater in the case of one car than in the case of the other. It is not only difficult, therefore, but impossible to say whether if a car had been furnished of the capacity ordered it would have been loaded to full visible capacity. Under these circumstances, the question arises, which minimum is to be protected when the carrier, for its convenience, has furnished a larger car than ordered? It seems only equitable that inasmuch as the uncertainty is created by the carriers' own action and for the carriers' own convenience in furnish-

ing the larger car, the minimum that should be protected under an unambiguous rule is the lesser minimum or the 80 per cent minimum of the car ordered. At all events, we hold that it is unreasonable to incorporate in tariff rules a provision admittedly doubtful and ambiguous.

It appeared upon argument that in certain cases the loading to full visible capacity was sought to be determined at destination rather than point of origin. Light loading lumber may be easily shaken down in transit; and the proper place to determine the question whether a car is loaded to full visible capacity is, as provided by the rules, at origin and not at destination. This fact should be noted upon the bill of lading at point of origin.

We are of opinion that as the changes herein found to be unreasonable or unjustly prejudicial, or both, were initiated without formal inquiry into their merits, and inasmuch as the *Lumber Car-load Minima* investigation above referred to may require some time before its determination, appropriate remedies should be promptly applied without waiting for the determination of the latter case, but subject to the conclusions which may be reached therein.

An appropriate order will be entered.

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No. 9215.
DULANEY BROTHERS
v.
CHICAGO & ALTON RAILROAD COMPANY.

Submitted July 2, 1917. Decided December 4, 1918.

Upon complaint that defendant's refusal to permit complainants to unload at Slater, Mo., a carload of cement, shipped from Continental, Mo., over an interstate route, within the free time provided by its tariffs, without demurrage, damaged complainants; *Held*, That no damages were shown to have resulted prior to the date upon which delivery was tendered free of demurrage, and that any damages arising thereafter do not appear to be attributable to a violation of the act to regulate commerce. Complaint dismissed.

John I. Williamson for complainants.

Charles M. Miller for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HARLAN, AND HALL.

BY DIVISION 3:

Complainants are Selkirk J. Dulaney and William P. Dulaney, copartners, engaged in the mercantile business at Slater, Mo. By complaint filed September 16, 1916, as amended, they allege that the refusal of defendant to permit them, on August 22, 1914, to complete the unloading of an interstate carload shipment of cement at Slater, without payment of a demurrage charge, and the unlawful conversion by defendant of the cement remaining in the car, resulted in damage to complainants in the sum of \$366.85, for which reparation is asked. The claim was presented to the Commission informally April 5, 1916.

The shipment consisted of 692 sacks of cement and moved from Continental, Mo., to Slater over an interstate route. It reached destination by way of defendant's line on August 18, 1914, and on the following day was placed for unloading on public delivery tracks. Late on August 20 complainants received a postal notice of the arrival of the shipment, dated August 19 by defendant's agent, who prepared it, but postmarked "August 20, 4 p. m." On August 21 complainants paid the freight charges and removed 25 sacks of cement from the car. After 7 a. m. on the following day, August 22, they sought to remove the remaining 667 sacks and were advised by

defendant's agent that his record showed that the notice of arrival was mailed on the 19th; that the 48 hours' free time for unloading had expired at 7 a. m. on the 22d; and that further unloading would not be permitted until a demurrage charge of \$1 had been paid. Complainants insisted that the free time for unloading had not expired and refused to pay this charge, whereupon defendant's agent refused to allow them to complete the unloading and locked the car.

On or about August 26 defendant's agent, upon the order of his superior officer, offered the shipment to complainants for unloading, free of the demurrage charge. This was refused, another car having been ordered to replace it. The offer was later repeated, without acceptance.

The 667 sacks of cement remained in the car until June 9, 1915, when they were sold by defendant at public auction and bid in by complainants for \$140. By that time the cement and sacks had been damaged by snow which had leaked in through the car. The damages asked are based on the alleged market value of the cement at Slater on August 22, 1914, and include the freight charges paid on the shipment.

Defendant's tariffs provided for two days' free time from 7 a. m. after the day of transmission of notice of arrival, with a charge of \$1 per car per day for detention thereafter; and that—

When claim is made that a mailed notice has been delayed, the post mark thereon shall be accepted as indicating the date of the notice.

While defendant insists that the above-quoted provision is not applicable here, it is not disputed that the notice was postmarked August 20 at 4 p. m. It would thus appear that the 22d of August was within the free time; that the demurrage charge demanded on the morning of that day was in contravention of defendant's tariff provisions; and that the action of defendant's agent in locking the car and preventing further unloading was in derogation of complainants' legal rights. Nevertheless, complainants were shortly thereafter afforded an opportunity to complete the unloading, without payment of the demurrage, and there is no evidence of damage accruing during the interval. As they could then have taken possession of their property without penalty, it does not appear that any damages thereafter arising are attributable to a violation by defendant of the act to regulate commerce; and the case of *L. & N. R. R. Co. v. Ohio Valley Tie Co.*, 242 U. S., 288, cited by complainants, does not sustain our authority to grant relief.

An order dismissing the complaint will be entered.

No. 9470.
WESTERN PINE MANUFACTURING COMPANY
v.
MIDLAND VALLEY RAILROAD COMPANY ET AL.

Submitted June 7, 1917. Decided October 29, 1918.

Rate on pine box shooks, in carloads, from Spokane, Wash., to Pitman, Kans., found to have been unreasonable. Reparation awarded.

R. J. Knott for complainant.

Chas. S. Albert for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

This complaint, seasonably filed, by complainant as successor in interest to the Washington Mill Company, assails the rate of 53.5 cents per 100 pounds charged by the defendants on a carload of pine box shooks shipped July 31, 1915, from Spokane, Wash., to Pitman, Kans., as unreasonable and unduly prejudicial, and asks for reparation and the establishment of a reasonable rate. Rates are stated in cents per 100 pounds.

Pitman is a local point on the Midland Valley Railroad, a few miles south of Wichita, Kans. The shipment, weighing 50,400 pounds, moved over the defendants' lines. Charges were collected thereon in the sum of \$269.65, at a joint commodity rate of 53.5 cents, legally applicable.

The complainant cited a rate of 47 cents contemporaneously in effect on lumber, including box shooks, from Spokane to the Missouri River, which rate was observed as a maximum at intermediate points over direct routes. Pitman is not intermediate to the Missouri River over a direct route, and the 47-cent rate did not apply to any point on the Midland Valley. On sash and doors, which ordinarily take a higher rate than lumber, the rate from Spokane to Pitman was 52 cents, which rate also applied to the Missouri River. There were also cited rates from Spokane to Wichita on box shooks and sash and doors, which were the same as the rates to Pitman; also rates to Coffeyville and Fort Scott, Kans., those to the former being 50.5 cents on shooks and 52 cents on sash and doors, and to the latter 49.5 cents on shooks and 52 cents on sash and doors.

Reference was made by the complainant to *Anson, Gilkey & Hurd Co. v. S. P. Co.*, 33 I. C. C., 332, in which we said that "in some instances sash and door rates are lower than the lumber rates. Such a relationship in rates requires clear and affirmative proof of its reasonableness." We there found that unjust discrimination existed, caused principally by "failure of the carriers to make a uniform classification of lumber and its products." For the defendants it was testified that the 52-cent rate on sash and doors to Pitman was subnormal, and was established to assist manufacturers in the northwest to compete with producers in California. From the Truckee and Hawley districts of California the rate to Pitman was 47 cents on lumber, shooks, and sash and doors, but effective July 1, 1916, the rate on sash and doors was increased to 48 cents. It was also testified that the necessity for meeting California competition on shooks had never been brought to the defendants' attention. Box shooks and sash and doors do not compete with each other and no evidence of undue prejudice with respect to the rates on those articles was adduced.

While it is apparent that there is a considerable lack of uniformity in the treatment of lumber and its products in the territory concerned, that question is not before us in this case, but will be disposed of in Docket No. 8131, *In the Matter of Rates on and Classification of Lumber and Lumber Products*.

Upon this record we find that the rate assailed has not been shown to be unduly prejudicial, but that it was unreasonable to the extent that it exceeded 50 cents per 100 pounds. We further find that the Union Savings & Trust Bank, receiver for the Washington Mill Company, paid and bore the charges at the rate herein found unreasonable; that it was damaged to the extent of the difference between the charges collected and those that would have accrued on the basis herein found reasonable; and that the complainant, Western Pine Manufacturing Company, or other lawful successor in interest of the Washington Mill Company, is entitled to reparation in the sum of \$17.65, with interest.

The rate of 50 cents has never been in effect. Since this case was submitted the Director General of Railroads, in exercise of powers conferred upon the President by the federal control act, has initiated, effective June 25, 1918, rates which exceed that complained of. Such rates are not in issue and the Director General has not been made a party defendant. Upon the present pleadings the rate so increased is not subject to review in this proceeding. An order awarding reparation will be entered.

No. 9212.

TEXAS EXPORT & IMPORT COMPANY

v.

ABILENE & SOUTHERN RAILWAY COMPANY ET AL

Submitted June 9, 1917. Decided December 9, 1918.

Increased rates on cottonseed cake and meal, in carloads, from certain points in Texas to Port Arthur, Tex., for export, found not justified. Reparation awarded.

H. H. Haines for complainant.

L. M. Hogsett, John M. King, M. J. Dowlin, J. S. Hershey, J. W. Gregg, J. F. Garvin, C. F. Burge, John T. Bowe, Gentry Waldo, J. M. Strupper, and A. L. Buford for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HARLAN, AND HALL.

BY DIVISION 3:

The complainant, a corporation engaged in buying and selling cottonseed cake, meal, and similar commodities at Galveston, Tex., alleges, by complaint filed September 29, 1916, that the rates applied by the defendants on cottonseed cake and meal, in carloads, shipped from certain points in Texas to Port Arthur, Tex., for export, between September 1, 1915, and April 1, 1916, were unreasonable and unjustly discriminatory to the extent of 1 cent per 100 pounds, *Cottonseed Products to Port Arthur, Tex.*, 38 I. C. C., 378. Reparation is asked.

The situation disclosed in this record is substantially set forth in the case cited, and need not be repeated. The rates of 18.5 cents per 100 pounds, collected on the shipments on which reparation is asked, were increased from 17.5 cents on June 24, 1915. While the report in the cited case dealt more at length with the adjustment of the rates from the territory of origin to Port Arthur and Galveston, we also found that the defendants had not sustained the statutory burden of showing that the rates to Port Arthur, increased since January 1, 1910, were just and reasonable. In the present case no further effort was made to sustain that burden. April 1, 1916, the 17.5-cent rates were restored.

Following the case cited and upon this record we find that the defendants have failed to justify the rates assailed; that the complainant made shipments as described and paid and bore the charges

thereon; and that it was damaged and is entitled to reparation in the sum of 1 cent per 100 pounds. The amount of reparation due can not be determined on this record, and the complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, including the date on which the charges were paid, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

No. 9826.

WALSH & WEIDNER BOILER COMPANY

v.

CHESAPEAKE & OHIO RAILWAY COMPANY ET AL.

Submitted November 1, 1918. Decided December 4, 1918.

Carload of fire brick from Haldeman, Ky., to Elk Mountain, N. C., found not to have been misrouted. Complaint dismissed.

John S. Fletcher for complainant.

W. C. Stephens for defendants.

R. Walton Moore for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HARLAN, AND HALL.

BY DIVISION 3:

It is alleged herein by complaint seasonably filed that, due to misrouting, unreasonable charges were collected by the defendant carriers on a carload of fire brick, shipped August 27, 1915, from Haldeman, Ky., to Elk Mountain, N. C., and reparation is asked. By supplemental complaint filed after the hearing with our permission the Director General of Railroads was made a party defendant. No further hearing was asked or had. Rates are stated in cents per 100 pounds.

Elk Mountain is about 7 miles from Asheville, N. C., on a branch of the Southern Railway extending from Craggy, N. C., a point 5 miles west of Asheville and intermediate thereto on traffic from Knoxville, Tenn., by way of the Southern. The shipment, weighing 40,000

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pounds, moved over the Chesapeake & Ohio Railway to Lynchburg, Va., and the Southern beyond. Charges were collected in the sum of \$126, based on actual weight at the applicable combination rate of 31.5 cents, composed of rates of 10 cents to Lynchburg and 21.5 cents, minimum 40,000 pounds, beyond. A minimum of 50,000 pounds applied in connection with the 10-cent component to Lynchburg and the shipment was therefore undercharged \$10. There was contemporaneously in effect a combination rate of 24 cents, composed of rates of 12 cents applicable over the Chesapeake & Ohio and its connections to Knoxville, and 12 cents over the Southern beyond. The complainant contends that the shipment should have been forwarded over the latter route.

The bill of lading bore the notation "Route, Asheville," but no rate was inserted. The complainant states the word "Asheville" was inserted in the bill of lading merely as a means of locating the destination point, and that it understood that, as a matter of operating convenience, shipments for Elk Mountain by way of Knoxville were first moved into Asheville and then back-hauled in a switching movement. For the initial carrier it is urged that Lynchburg was the natural and only junction point at which the shipment could have been delivered in order to insure its movement through Asheville and thus comply with the shipper's specific routing instructions.

We find that the shipment was not misrouted, and an order dismissing the complaint will be entered.

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No. 9273.

WICHITA WHOLESALE FURNITURE COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted May 5, 1917. Decided December 4, 1918.

1. Complainant's circular table tops and tops with rims attached found to have been properly rated as furniture stock in the white.
2. Defendants' local rates, applicable to these commodities, loose or in packages, in carloads, from St. Louis, Mo., Peoria and Chicago, Ill., and points taking the same rates to Wichita, Kans., and when used as factors in making through rates from Portsmouth, Ohio, and points taking the same rates, to Wichita, found to have been unreasonable to the extent that they exceeded the respective class A rates applicable to furniture stock in the white contemporaneously in effect from and to those points. Complaint dismissed.

W. J. Wagner for complainant.*Robert W. Fyfe* and *W. E. Prendergast* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HARLAN, AND HALL.

BY DIVISION 3:

Complainant is a corporation engaged in the manufacture of furniture at Wichita, Kans. By complaint filed October 21, 1916, it alleges that the rates charged by defendants on material, used by it in the construction of tables and other furniture, from St. Louis, Mo., Peoria and Chicago, Ill., Portsmouth, Ohio, and points taking the same rates, to Wichita were and are illegal and that they are unreasonable, unjustly discriminatory, and unduly prejudicial. We are asked to require defendants to apply the legal rates and to prescribe reasonable and nondiscriminatory rates for the future. Rates are stated in cents per 100 pounds and are those in effect prior to June 25, 1918.

The material in question, of which approximately 90 per cent is used in the manufacture of tables, consists of table tops without rims: rims which are attached to these tops by complainant; and tops with rims attached before shipment. These articles are products of built-up wood which is made by applying hydraulic pressure to layers of wood or wood and veneer after the layers have been glued together. The tops are sawed to shape by the manufacturer, some round and others rectangular. The former range from 45 inches to 60 inches in diameter and the latter from 40 inches to 48 inches in

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length and from 24 inches to 28 inches in width, each being about thirteen-sixteenths of an inch thick. Apparently no mechanical work is done to the tops by complainant, except to "sand" them preparatory to the coloring and varnishing. The rims are designed to give the appearance of greater thickness to the tops, those attached by the manufacturer consisting of strips of built-up wood about 1½ inches in width which extend around the outer edge of the tops and are dovetailed thereto by a patented process. The rims shipped unattached consist merely of narrow strips of built-up wood, and when for use in making round tables are bent to the required radius. In placing orders for this material it is necessary in the trade that dimensions and specifications be given and that the tops be designated as table tops, and they are so billed. The rates from Portsmouth and points taking the same rates are made by combination on Chicago, Peoria, or Mississippi River gateways, and only the factors west of these points are assailed.

Under the caption of furniture, the western classification rates furniture stock in the white, knocked down, loose or in packages, in carloads, minimum 30,000 pounds, class A. The joint class A rates from St. Louis, Peoria, and Chicago to Wichita are 51 cents, 54.75 cents, and 58.5 cents, respectively. Defendants maintain joint commodity rates from and to these points of 57.5 cents, 62.25 cents, and 67 cents, respectively, minimum 20,000 pounds, on furniture described in the classification under the caption of furniture. The rates on lumber from and to these points are 24 cents, 28.5 cents, and 28.5 cents, respectively, but commodity rates of 1 cent over the lumber rates apply on built-up or combined wood, bent or straight. Complainant alleges that defendants wrongfully refuse to apply the built-up wood rates to the material in question and apply instead the commodity rates applicable to furniture. It seeks rates for the future no higher than those contemporaneously applicable to built-up wood.

It was admitted for defendants at the hearing that the rectangular tops without rims and the unattached rims are entitled to the built-up wood rates, with which we agree. But they contend that the value of the top is materially increased when the rim is added, and that the circular tops have undergone additional processes of manufacture, thereby losing their identity as mere board, and that they are therefore essentially furniture stock. We are of the opinion that the circular table tops and the tops with rims attached were properly ratable as furniture stock in the white, and we find there was no justification from a classification standpoint for according these articles the built-up wood rates.

Complainant refers to commodity rates, differentials over the lumber rates, but materially lower than the rates assailed, applying from

St. Louis to Wichita on window 'screens, door frames, and certain other planing-mill products, but similarity of transportation conditions affecting those rates and the rates assailed are not established.

The commodity rates referred to from St. Louis, Peoria, and Chicago to Wichita are higher than the respective class A rates and are also higher than the aggregate of intermediate rates to and from Kansas City, composed of commodity rates to that point of 22½ cents from St. Louis, 27¼ cents from Peoria, and 32 cents from Chicago, and a class A rate of 33 cents beyond. The commodity rate from Chicago to Kansas City on furniture, as described in the classification under the head of furniture, is the same as the class A rate from and to those points, while the commodity rates from St. Louis and Peoria to Kansas City are lower than the respective class A rates. The existence of joint commodity rates from St. Louis, Peoria, and Chicago to Wichita, higher than the Kansas City combination, appears to be due principally to the fact that the factor from Kansas City to Wichita is the class A rate, lower than the commodity rate contemporaneously applicable, the use of which is authorized by an alternative provision of the tariff providing that the lowest rate shall apply. This departure from the provisions of the fourth section of the act was created subsequent to August 17, 1910, is maintained without authority from this Commission, and is unlawful. With respect to the rate from Portsmouth, the factors applying west of the gateways named are lower than the Kansas City combination, as the tariffs provide for the application of the class A rates in making such through rates. Defendants introduced no evidence in justification of the maintenance of their commodity rates on furniture from Chicago, Peoria, and St. Louis to Wichita higher than the class A rates.

We are of the opinion and find that defendants' local rates applicable to circular table tops and tops with rims attached, loose or in packages, in carloads, minimum 80,000 pounds, from St. Louis, Peoria, and Chicago and points taking the same rates to Wichita, and when used as factors in making through rates from Portsmouth and points taking the same rates, to Wichita, were unreasonable to the extent that they exceeded the respective class A rates contemporaneously in effect from and to those points.

The Director General of Railroads, in exercise of powers conferred upon the President by the federal control act, has initiated rates which exceed those complained of. These increased rates are not in issue and the Director General has not been made a party defendant. Upon the present pleadings the rates so increased are not subject to review in this proceeding.

An order dismissing the complaint will be entered.

No. 9830.¹

E. I. DU PONT DE NEMOURS POWDER COMPANY ET AL.

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY
ET AL.

Submitted October 16, 1918. Decided December 30, 1918.

Rates on sulphuric acid, in carloads, from Copperhill, Tenn., to Gibbstown and Carney's Point, N. J., found to have been and to be unreasonable. Reparation awarded.

Harvey S. Farrow for complainants.

George R. Allen and *William L. Kinter* for Pennsylvania Railroad Company, West Jersey & Seashore Railroad Company, Cumberland Valley Railroad Company, and Philadelphia & Reading Railway Company.

R. Walton Moore for Director General of Railroads.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are E. I. du Pont de Nemours & Company, a corporation engaged in the manufacture of explosives at Gibbstown, N. J., and its predecessor, E. I. du Pont de Nemours Powder Company. By complaints filed August 9 and 10, 1917, as amended, they allege that the rates charged on 80 carloads of sulphuric acid shipped between August 4 and December 9, 1915, inclusive, from Copperhill, Tenn., to Gibbstown and Carney's Point, N. J., were unreasonable and unjustly discriminatory to the extent that they exceeded \$6.06 per net ton. Reparation and the establishment of reasonable rates are asked. Rates are stated in amounts per net ton.

Copperhill, a local point on the Louisville & Nashville Railroad, is between Knoxville, Tenn., and Atlanta, Ga. Gibbstown and Carney's Point are located on the West Jersey & Seashore Railroad on the New Jersey side of the Delaware River, about 20.5 and 32.5 miles, respectively, south of Philadelphia, Pa. Carney's Point is also served by the Philadelphia & Reading Railway through a float or lighterage service from Wilmington, Del.

Fifty-four of the shipments moved to Gibbstown over the Louisville & Nashville to Norton, Va., Norfolk & Western Railway to

¹ This report also embraces No. 9830 (Sub-No. 1), Same v. Same.

Hagerstown, Md., Cumberland Valley Railroad to Harrisburg, Pa., Pennsylvania Railroad to Philadelphia, and the West Jersey & Seashore beyond. The remaining 26 shipments moved to Carney's Point over the above route to Hagerstown, Western Maryland to Shippensburg, Pa., and the Philadelphia & Reading beyond.

Prior to November 19, 1915, the rate applicable from Copperhill to Gibbstown over the route of movement was a combination rate of \$6.92, composed of rates of \$5.66 to Philadelphia and \$1.26 beyond. On that date a joint rate of \$6.52 was established. Prior to February 1, 1916, the rate applicable from Copperhill to Carney's Point over the route of movement was a combination rate of \$7.52, composed of rates of \$5.66 to Philadelphia, \$1.26 to Wilmington, and 60 cents beyond. Between February 1 and February 21, 1916, inclusive, the rate legally applicable was \$7.32, made up of rates of \$5.66 to Philadelphia, \$1.06 to Wilmington, and 60 cents beyond. On February 22, 1916, a joint rate of \$6.52 was established. Apparently one of the shipments to Gibbstown was overcharged and some of the shipments to Carney's Point were undercharged.

At the time of movement a rate of \$6.06 applied on sulphuric acid in carloads from Copperhill over the route of movement in connection with the Central Railroad of New Jersey to Chrome and Perth Amboy, points in northern New Jersey which are generally considered to be within the New York rate group. On October 11, 1916, the same rate was established over the route of movement to New York, N. Y., and to Lake Junction, Kenvil, and Hopatcong Junction, branch-line points in northern New Jersey on the Central of New Jersey and Delaware, Lackawanna & Western railroads.

The complainants show that the class rates from southern points, including Copperhill, also the commodity rates from southern points adjacent to Copperhill, including Knoxville and Atlanta, to Gibbstown and Carney's Point were and are generally the same as the rates applicable to New York; that on petroleum from points in the west to Paulsboro, N. J., a point on the West Jersey & Seashore about three miles north of Gibbstown, the Philadelphia rate, which is lower than the New York rate, is applied; and that on traffic to Copperhill and other points in adjacent territory Gibbstown and other points in southern New Jersey on the West Jersey & Seashore are accorded the same rates as those applicable from New York; and that the usual method of constructing rates from many points in the south, including Atlanta, to Lake Junction, Hopatcong Junction, and Kenvil and other points in northern New Jersey on branch lines, is to charge an arbitrary over the New York rate, while, as above stated, Gibbstown and Carney's Point are generally accorded the same rate as that applicable to New York, but that with respect to the traffic

in question this rule is reversed, the northern New Jersey points referred to being accorded the New York rates, while Gibbstown and Carney's Point are charged higher rates.

For the defendants a willingness to make reparation on basis of the rate of \$6.52 was expressed, but it is insisted that this rate is not unreasonable. They state that the Philadelphia rate was applied on petroleum moving from the west to Paulsboro on account of commercial competition at Chester and Marcus Hook, Pa., points directly across the Delaware River from Paulsboro, and urge that the normal basis for constructing rates on traffic from or moving by way of Ohio and Mississippi river crossings to Gibbstown and Carney's Point, Paulsboro, and other stations on the West Jersey & Seashore south of Westville, N. J., is to charge an arbitrary over the Philadelphia rate, the arbitrary applicable on the traffic in question to these destinations being \$1. They observe that upon this basis the rate on sulphuric acid, in carloads, from Copperhill to these destinations, would be \$6.66. Sulphuric acid from Copperhill to the destinations named does not move through the crossings referred to, and it is not shown that the rates generally from Copperhill are based on the rates from those crossings.

The defendants also urge that the conditions surrounding transportation from points in southern New Jersey to Copperhill and other points in adjacent territory are different from those affecting shipments moving in the opposite direction, and that the New York rates are applied on traffic moving to points in the south from southern New Jersey points in order to aid manufacturers in the latter territory in disposing of their products.

As above stated, the rates on traffic moving to Gibbstown and Carney's Point from Atlanta and Knoxville, to which Copperhill is intermediate, are the same as those applicable to New York. The distance over the routes of movement from Copperhill to Gibbstown is 1,004 miles, and to Carney's Point 1,029 miles. The ton-mile revenues accruing under the rate of \$6.06 asked would be 6.04 mills and 5.89 mills, respectively.

By supplemental complaint which adopts all the paragraphs of the original complaint except that relating to the rate for the future, filed on September 19, 1918, the Director General was made a party defendant. With respect to the rate for the future, complainant consents that whatever rate we might find would have been reasonable may, while said roads are under federal control, or unless sooner modified by order of the Director General, reflect the 25 per cent increase provided for in General Order No. 28. The answer of the Director General is similar to that filed by him and set out in our report in *Willamette Valley Lumbermen's Assn. v. S. P. Co.*, 51

I. C. C., 250. No further hearing was asked or had. The case therefore stands for disposition upon the present record.

We find that the rates legally applicable were between August 4 and December 9, 1915, inclusive, unreasonable to the extent that they exceeded \$6.06 per net ton and that the present rates are, and for the future will be, unreasonable to the extent that they exceed or may exceed the rates contemporaneously maintained to New York. We further find that complainants made the shipments as described and paid and bore the charges thereon; that they have been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found to have been reasonable; and that complainant E. I. du Pont de Nemours & Company is entitled to reparation, with interest. The exact amount of reparation due can not be determined upon the present record, and the above-named complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the date on which the charges were paid, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified, we will consider the entry of an order awarding reparation.

An appropriate order for the future will be entered.

51 I. C. C.

No. 9873.

FARMERS & GINNERS COTTON OIL COMPANY
v.
ALABAMA GREAT SOUTHERN RAILROAD COMPANY
ET AL.

Submitted November 29, 1918. Decided December 4, 1918.

states on cottonseed hull shavings, in carloads, from Birmingham, Ala., to Hopewell, Va., not shown to have been or to be unreasonable, unjustly discriminatory, or unduly prejudicial. Complaint dismissed.

O. L. Bunn for complainant.

D. Lynch Younger and *R. Walton Moore* for defendant carriers.

R. Walton Moore for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HARLAN, AND HALL.

BY DIVISION 3:

It is alleged herein, by complaint filed September 10, 1917, as amended, that the rates charged on numerous carloads of cottonseed hull shavings, shipped from Birmingham, Ala., to Hopewell, Va., on and after March 17, 1916, were unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that they exceeded 24 cents per 100 pounds. Reparation and the establishment of a reasonable rate are asked. On June 25, 1918, subsequent to the hearing, the rate then in effect on cottonseed hull shavings from Birmingham to Hopewell was increased as a result of General Order No. 28 issued by the Director General of Railroads. By amendment filed October 5, 1918, with our permission, the Director General was made a party defendant and the present increased rate is similarly assailed. The parties submitted the case upon the original record. Rates stated are per 100 pounds, and, except as otherwise noted, are those in effect when the complaint was filed.

Cottonseed hull shavings are produced by extracting from the cottonseed hulls the lint left after ginning, and after being bleached are used in making gun cotton. They have a shorter fiber than cotton linters, and, in the unbleached condition in which they are shipped, are worth less than half as much per pound. They are shipped in 750-pound bales, which are slightly larger than the 500-pound bales of cotton linters. The standard 36-foot car will hold from 32 to 35

bales, or from 24,000 to 26,000 pounds of shavings. The average weight of the 49 carloads listed in the complaint was 30,956 pounds.

Prior to May 8, 1916, a combination rate of 31.4 cents applied on this traffic from Birmingham to Hopewell, made up of a commodity rate of 24 cents, minimum 20,000 pounds, from Birmingham to Petersburg, Va., and the fifth-class local distance rate of 7.4 cents, minimum 30,000 pounds, beyond. On that date a joint through commodity rate of 25.6 cents, minimum 20,000 pounds, was established. On all traffic from Memphis, Tenn., Hopewell takes the Virginia cities basis of rates. A commodity rate of 25.4 cents, minimum 30,000 pounds, applied on this traffic from Memphis to Hopewell prior to the first movement from Birmingham. From Birmingham to the Virginia cities there is a commodity rate of 24 cents, minimum 20,000 pounds. The distances to Hopewell are 890 miles from Memphis and 720 miles from Birmingham.

On behalf of the complainant it was testified that the sharpest competition in the sale of cottonseed hull shavings at Hopewell is with manufacturers at Memphis; and contended that the application of the Virginia cities rates to Hopewell from Memphis and the denial of such basis of rates from Birmingham gives to Memphis an undue preference and advantage and subjects Birmingham to undue prejudice and disadvantage.

It was also testified for the complainant that the rate from Memphis to Hopewell applied through Birmingham, and that this was a practicable route, being but 83 miles longer than the short-line route. For the defendants it was testified that the rate from Memphis to Hopewell applies by way of Bristol, Va.-Tenn., and that there is no movement from Memphis to Hopewell through Birmingham owing to the absence of divisions over that route.

Hopewell also takes the Virginia cities basis of rates from Nashville, Tenn., the rate on this traffic being 22.4 cents, and the distance to Hopewell 681 miles. Hopewell is also given the Virginia cities basis on all traffic from Illinois, Indiana, and territory west of the Mississippi River; on phosphate rock from certain points in Tennessee; and on sulphuric acid and cotton linters from various points in the southeast. On all southbound traffic to points in the southeast, including Birmingham, Hopewell takes the same rates as the Virginia cities. Complainant also shows that the Norfolk & Western Railway publishes a rate of 35 cents per net ton on this traffic from Petersburg to Hopewell, but this rate applies solely to intrastate traffic.

On behalf of the defendants it was shown that the Virginia cities basis is a gateway adjustment, and that there is no movement of cottonseed hull shavings to the Virginia cities locally, the rates to

those points serving only as a basis for rates to points beyond. Rates from points in the southeast to Hopewell and other local points in Virginia are generally combination rates based on the Virginia cities. It was explained that the Virginia cities rates from central freight association territory and territory west thereof are part of the so-called trunk line adjustment, based on the Chicago-New York rates, and were established at Hopewell and other local stations on the Norfolk & Western in Virginia to meet the cross-country competition of the Chesapeake & Ohio Railway, which line established that basis as a maximum to its local stations; and further that the rates from Memphis and Nashville to Hopewell and the Virginia cities are based on the trunk line adjustment and governed by the official classification, and that the rates on phosphate rock from points in Tennessee, referred to by the complainant, are based on the Nashville rates.

For all of these rates the defendants denied responsibility, on the ground that they merely meet the rates made by the lines through the Ohio River routes. In regard to the rates on sulphuric acid from points in the southeast to Hopewell, it was stated that they are not made with reference to the Virginia cities rates, but are based on combinations on Petersburg and Burkeville, Va., subject to a maximum rate determined by a distance scale which gives Hopewell the same rate as Petersburg in cases where they happen to come within the same distance block. The defendants contend that they are not responsible for the establishment at Hopewell of the Virginia cities rates on cotton linters from points in the southeast, including Birmingham, as that adjustment was established by a competing line not defendant here, and the Norfolk & Western refused to take less than its local rate from Petersburg to Hopewell as its division of those rates. As to the application of the Virginia cities basis at Hopewell on all southbound traffic it was explained that this is the usual adjustment at all local stations in that territory; that it was established for the purpose of encouraging development and production along the lines of the carriers serving the southeast; and that the conditions applying to the southbound traffic differ substantially from those applying to northbound traffic, which meets keen market competition from the east and north at the Virginia cities.

Considerable evidence was introduced for the defendants in support of the reasonableness of the former and present rates. The earnings per car, based on those rates and the minima applicable, \$70.20 and \$51.20, respectively, are, with two or three exceptions, lower than those on other articles on which commodity rates apply between Birmingham and Hopewell. The commodity rates on cottonseed hull shavings from various southeastern points to St. Louis,

Mo., and certain other points, range considerably higher, distance alone considered, than 31.4 cents. The ton-mile revenue under the 31.4-cent rate was 8.7 mills and under the 25.6-cent rate, 7.1 mills, and the car-mile earnings, based on the applicable minima, were 9.7 and 7.1 cents, respectively, as compared with car-mile earnings averaging between 16 and 17 cents on all traffic for class 1 roads in official classification territory for the calendar year 1916.

We are of the opinion and find that the rates assailed are not shown to have been or to be unreasonable, unjustly discriminatory, or unduly prejudicial.

An order dismissing the complaint will be entered.

No. 9965.

CHARLES SCHAEFER & SON

v.

LEHIGH VALLEY RAILROAD COMPANY.

Submitted April 29, 1918. Decided October 29, 1918.

Assessment of reconsignment charges at Townley, N. J., on carloads of hay from certain interstate points, while no charge was made for the same service at Jersey City, N. J., found unreasonable. Reparation awarded.

Herbert Goldmark for complainants.

R. W. Barrett for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

By DIVISION 3:

The complainants are Charles Schaefer and Charles Schaefer, jr., copartners, trading in the hay business at Townley, N. J., under the name of Charles Schaefer & Son. By complaint seasonably filed they allege that reconsigning charges of \$3 per car collected by the defendant at Townley on numerous carloads of hay, moving interstate, during December, 1914, January and February, 1915, were unreasonable and unduly prejudicial, and pray for reparation.

Townley is a local point on the Lehigh Valley Railroad, about 14 miles west of Jersey City, N. J. The shipments, consisting of 339 carloads of hay, moved from various points in New York, Pennsylvania, New Jersey, Indiana, Ohio, and Michigan, consigned to the

51 I. C. C.

complainants at Townley. Prior to arrival at the latter point or within 24 hours thereafter, the shipments were reconsigned by the complainants to points in New York harbor. In addition to the line-haul charges, \$3 per car was collected for the reconsignment services at Townley. The complainants originally paid all the reconsignment charges but subsequently charged \$414 of the amount to the consignors, so that they ultimately bore \$603.

For some time prior to the period in question no reconsignment charge was assessed at Townley or Jersey City on carload shipments of hay if the order for reconsignment was given prior to arrival at these points or within 24 hours from the first 7 a. m. following the date of arrival. On December 1, 1914, a charge of \$3 per car was established for such reconsignment at Townley, but no charge was made at Jersey City. April 15, 1915, the defendants restored the former reconsignment arrangement at Townley. The complainants contend that the establishment of the reconsignment charge at Townley was unreasonable and subjected Townley to undue prejudice and unduly preferred Jersey City.

The establishment of this reconsignment charge resulted in charges increased subsequent to January 1, 1910, and the burden was on defendant to justify them. No evidence was submitted for the defendant to sustain that burden. Its witness testified that the free reconsignment of shipments at Townley relieved congestion of freight at Jersey City; that at the time the charge assailed was established it was also established at points generally outside of Jersey City; and that it was not intended that Townley should be put on any different basis than Jersey City, so far as such reconsignment was concerned. A willingness to pay reparation was expressed.

Upon the record before us we are of opinion and find that it was unreasonable for defendant to establish a reconsignment charge at Townley while the same service was performed by it at Jersey City without such charge. We further find that the complainants made the shipments as described and paid and bore the reconsignment charges on 201 carloads; and that they have been damaged to the extent of the amount of such reconsignment charges and are entitled to reparation in the sum of \$603, with interest. An order will be entered accordingly.

No. 9838.

STANDARD OIL COMPANY (CALIFORNIA)

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted February 26, 1918. Decided December 9, 1918.

Liquid petrolatum, a medicinal mineral oil refined from petroleum, held to be within the western classification description of "patent or proprietary medicines." The second-class rate found legally applicable on carload shipments from Richmond, Cal., to Portland, Oreg., and a combination rate, composed of the second-class rate plus a commodity rate on "drugs, medicines, and chemicals" on carload shipments to certain other interstate destinations. Adjustment of charges on these bases directed and complaint dismissed.

W. B. Roberts for complainant.

G. H. Baker for Atchison, Topeka & Santa Fe Railway Company.

Elmer Westlake for Southern Pacific Company.

Robert W. Fyfe and *H. C. Bush* for all defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HARLAN, AND HALL.

BY DIVISION 3:

The complaint herein, filed August 21, 1917, as amended, alleges that the charges assessed by the defendants on 30 carloads of petroleum oil shipped between September 25, 1915, and August 29, 1916, from Richmond, Cal., to Chicago, Ill., New York and Brooklyn, N. Y., Dallas, Tex., Kansas City, Mo., Denver, Colo., and Portland, Oreg., were unreasonable and illegal. On some of the shipments the complainant asks reparation and on others seeks to be relieved of the payment of additional charges demanded by the defendants. Although unreasonableness is alleged, no evidence bearing on that issue was adduced, the real question presented being with respect to the rates legally applicable. Rates are stated in amounts per 100 pounds.

When the shipments moved commodity rates of 90 cents applied from Richmond to each of the destinations named, except Portland, on:

Oils, petroleum and its products, including compounded petroleum oils and greases classified fifth class under subheading of "petroleum and its products" under heading of "oils" in current western classification, subject to rules, weights per gallon, and minimum weights thereof.

The western classification, which governed, under the subheading referred to in the tariffs, rated petroleum not otherwise indexed by name, in barrels, carload minimum 26,000 pounds, fifth class. A commodity rate of 20 cents applied to Portland on oils somewhat similarly described by reference to the classification and charges at these respective rates were originally assessed and are stated to have been prepaid on all the shipments. On four of the shipments additional charges were collected, the bases for the total charges on three of these being as follows: On two shipments to Kansas City the first-class any-quantity rate of \$3 applicable to oils not otherwise indexed by name, other than medicinal oils, and on one shipment to Denver a commodity rate of \$1.50 assumed to have been in effect from and to those points on drugs and medicines, including patent and proprietary medicines. On one shipment to Chicago, stated to have weighed 28,680 pounds, the basis for the total of \$408.20 is not shown. Subsequently, charges at the first-class rates were demanded on all the shipments, except the two upon which charges at that basis had been theretofore assessed, but payment of these additional charges has been deferred pending the decision of this case. The first-class rates were 58 cents to Portland and from \$2.60 to \$3.70 to the other destinations. The complainant contends that the commodity rates referred to on petroleum oil were legally applicable to all the shipments. It was testified for the defendants that it appeared upon further investigation that the commodity shipped is a medicinal oil and that it did not come within the description in connection with the first-class rating, but that the rating legally applicable was second class, on "patent or proprietary medicines, liquid, in shipments of one kind only, in barrels or boxes, c. l. min. wt. 24,000 lbs."

The commodity comprising the shipments is a mineral oil refined from petroleum and used as an intestinal lubricant in the alleviation and treatment of constipation. The United States Pharmacopœia defines oils of this character, when conforming to certain prescribed tests, as "liquid petrolatum." The complainant distributes its product through E. R. Squibb & Sons and employs as a trade name the pharmacopœial designation followed by the words, "Squibb, heavy (Californian)." It is shipped in glass bottles, in wooden boxes, generally 12 one-pint bottles to the box, though some boxes contain only 1 one-gallon bottle. The labels on the bottles containing this oil as sold at retail state that it is a "mineral oil specially refined under our control for internal use," and show the quantities that constitute a dose.

The complainant urges that as the oil is derived from petroleum and is not compounded it is entitled to the rate on petroleum oil, irrespective of the use to which it is put. The excise tax assessed on medicines is paid on this article, and in official classification territory the rating on "medicines, n. o. s.," is applied to it and other mineral oils.

The record indicates that prior to the investigation made by the defendants as to the nature of complainant's oil, their refusal to apply the commodity rates demanded by complainant was based on the failure of the classification then in effect specifically to provide for packing "in glass" in connection with the fifth-class rating on petroleum oil. Effective September 1, 1916, a fifth-class carload rating was specifically provided in the classification under petroleum or petroleum products on "oil, not otherwise indexed by name, in glass or earthenware, packed in barrels or boxes," and as such commodity rates have been applied to complainant's shipments moving after that date and prior to the hearing, the complainant insists that the defendants have thereby evidenced their intention to apply to this product the commodity rates applicable to petroleum oil. As it was explained for the defendants that their failure to apply the proper rates was due to representations made to them that the oil was not a medicinal oil, the significance sought to be attached to their former attitude is unwarranted. In our opinion this oil was included within the classification description of "patent or proprietary medicines," to which the second-class rating was applicable. During the period of movement a commodity rate of \$1.50 applied on drugs, medicines, and chemicals from the California terminals, including Oakland and San Francisco, Cal., to the destinations in question, except Portland, and it is our opinion that the article shipped was within the description in connection with that rate. The tariffs naming rates from Richmond provided for the alternative application of the "back-haul" combination if it made a lower charge than the joint rate. Prior to August 15, 1916, the Atchison, Topeka & Santa Fe Railway published a second-class rate of 5 cents from Richmond to San Francisco and the Southern Pacific Company a second-class rate of 6 cents from Richmond to Oakland. On the date mentioned these rates were superseded by a second-class arbitrary of 5 cents from Richmond to the California terminals over either road. In every instance, except in connection with the shipment to Portland, the back-haul combination was lower than the second-class joint rate.

We find that the second-class rate of 47 cents per 100 pounds was legally applicable on the shipments to Portland, and that on the remainder the following combination rates were legally applicable: \$1.55 per 100 pounds on the shipments that moved over the Atchison, Topeka & Santa Fe and \$1.55 and \$1.56 per 100 pounds, respectively, on the shipments that moved over the Southern Pacific prior and subsequent to August 15, 1916. The charges should be adjusted on these bases.

An order dismissing the complaint will be entered.

No. 9877.

LEO ALBRECHT ET AL.

v.

NORTHERN PACIFIC RAILWAY COMPANY ET AL.

Submitted December 3, 1917. Decided December 9, 1918.

1. Rate on stock sheep, in double-deck cars, from Miles City, Mont., to Dempster, S. Dak., found to have been unreasonable. Reparation awarded.
2. Prayer for establishment of through routes and joint rates on stock sheep from Montana points to South Dakota points denied.
3. Failure of defendants to provide fattening or feeding-in-transit arrangements at South Dakota points on sheep destined to Omaha, Nebr., and Sioux City, Iowa, not shown to result in undue prejudice.

Oliver E. Sweet for complainants.

L. R. Capron for Northern Pacific Railway Company.

C. A. Lahey for Chicago, Milwaukee & St. Paul Railway Company.

Robert H. Widdicombe for Chicago & North Western Railway Company, Pierre, Rapid City & North Western Railway Company, and Pierre & Fort Pierre Bridge Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HARLAN, AND HALL.

BY DIVISION 3:

The complainants are Leo Albrecht and Earl L. Cobel, copartners, engaged in farming at Dempster, S. Dak., under the name of Albrecht & Cobel, and P. W. Dougherty, J. J. Murphy, and F. E. Wells, constituting the Board of Railroad Commissioners of South Dakota. By complaint filed September 10, 1917, as amended, they allege that the rate of defendants Northern Pacific Railway and Chicago & North Western Railway, the latter hereinafter called the North Western, for the transportation of stock sheep, in double-deck carloads, from Miles City, Mont., to Dempster, was unreasonable and unduly prejudicial; that the defendants do not maintain through routes and joint rates from Montana points on the Chicago, Milwaukee & St. Paul Railway, hereinafter called the Milwaukee, and the Northern Pacific to points in South Dakota, except in a few instances, in which instances the rates are unreasonable; and that the defendants do not maintain feeding-in-transit rules and regulations at South Dakota points on traffic destined to Omaha, Nebr., and Sioux City, Iowa. We are asked to prescribe reasonable and nonprejudicial rates, rules, and regulations for the transportation of stock sheep in

double-deck carloads from Montana points to Omaha and Sioux City, including through routes and joint rates to South Dakota points with feeding or fattening in transit arrangements at such points, and to award reparation on two double-deck carloads of stock sheep shipped on October 9, 1915, from Miles City to Dempster. It was stated for the defendants that, due to the inartificial manner in which the complaint is drawn, they were unprepared to deal with all of the issues defined and objected to doing so. Our disposition of the case renders unnecessary any precise determination of the scope of the pleadings. Rates stated are in cents per 100 pounds and are those in effect prior to the establishment of rates required by General Order No. 28 issued by the Director General of Railroads to take effect June 25, 1918.

The shipments on which reparation is asked moved over the Northern Pacific to Oakes, N. Dak., thence North Western to Dempster, where the sheep were sold and after fattening were reshipped in January, 1916, to Sioux City. Originally they were consigned to Chicago, Ill., with privilege of stopping at Dempster for fattening, and charges were collected on basis of the rate to Chicago of 55 cents, minimum 22,000 pounds, plus 7 cents for fattening in transit. A charge of \$2 per car was also collected for inspection at Miles City, which charge is not in issue. For the transportation from Dempster to Sioux City charges were collected at a rate of 18.8 cents. These charges likewise are uncontested.

At the hearing the North Western refunded to complainants Albrecht & Cobel the sum of \$79.20, representing the difference between the charges at 44 cents, the legal joint rate from Miles City to Dempster, and 62 cents, the rate to Chicago, plus the charges for transit. These complainants now seek further refund on basis of a rate of 29.25 cents, contending that the rate on stock sheep to Dempster should not exceed 75 per cent of the rate of 39 cents contemporaneously in effect on fat sheep over the Milwaukee from Miles City to St. Paul, Minn.

The distance to Dempster via the route of movement is 659 miles, and the complainants point out that in *Unreasonable Rates on Meats*, 22 I. C. C., 160, we prescribed for this distance a rate of 39 cents on cattle or sheep in double-deck cars with an arbitrary of 2.5 cents for joint line hauls. Subsequently in the same case, 23 I. C. C., 656, we held that the joint line arbitrary should not apply for distances exceeding 500 miles and, reaffirming *Rates on Stock Cattle and Sheep*, 23 I. C. C., 7, held that rates on stock cattle and stock sheep should not exceed 75 per cent of the rates on beef or fat cattle and fat sheep.

The distance from Miles City to St. Paul over the Milwaukee is 706 miles and over the Northern Pacific 745 miles. The rate of the

latter line is 41 cents. From Miles City to Omaha and Sioux City over the lines of the Northern Pacific and the North Western the rate is 44 cents and the distances are 895 and 794 miles, respectively. By way of the Milwaukee between the same points the rate is 39 cents and the distances are 838 and 678 miles, respectively.

For the defendants it was shown that the route to Dempster includes 257 miles of branch-line service and that the 44-cent rate to Dempster is the rate to the markets of Omaha and Sioux City blanketed back to all stations east of the Missouri River and applies from stations as far west as Howard, Mont., approximately 60 miles from Miles City. Miles City is practically the nearest point in the origin group and the distance to Dempster is substantially less than the average distance to the destination group. We have repeatedly indicated that in dealing with group rates justice demands consideration of the groups as a whole. Numerous other rate comparisons were submitted by the parties and the defendants have offered earnings statistics, all of which have been fully considered.

The defendants maintain rates on cattle somewhat less than on sheep, and the complainants contend that to Dempster and other South Dakota points the rates on sheep in double-deck cars should not exceed those on cattle to the same points, as the transportation conditions are substantially alike. It is stated that the minima and loading of cattle and of sheep in double-deck cars are usually the same and that in many cases, including *Unreasonable Rates on Meats, supra*, we prescribed the same rates for sheep in double-deck cars as for cattle. The rate of the Northern Pacific and the North Western on fat cattle to Dempster is 39 cents and this rate applies to stations in South Dakota for distances from Miles City ranging from 567 to 895 miles.

The complainants have not in any definite manner stated the origin or destination points or the lines or portions of lines of carriers from and to which through routes and joint rates are desired, and the record does not enable us to determine whether or not in connection with the desired rates the terms of the limiting provision of section 15 of the act could or would be observed. The prayer in this respect must be denied.

The withholding of feeding or fattening in transit arrangements is not alleged to result in undue prejudice, nor is such undue prejudice established. The Milwaukee now maintains rules with which complainants express satisfaction and the North Western with the concurrence of the Northern Pacific expressed willingness to publish authority for stopping shipments at South Dakota points on basis of the through rates to Omaha and Sioux City with the addition of reasonable charges for the transit service. We think that such action is desirable.

While the present record is not broad enough to lay a foundation for such a finding as to South Dakota points generally, we find that as to the shipments from Miles City to Dempster the rate of 44 cents per 100 pounds was unreasonable; that the rate on fat sheep in double-deck carloads should not have exceeded the rate contemporaneously in effect on beef cattle, carloads, and that the rate on stock sheep should not have exceeded 75 per cent of the rate on fat sheep or on beef cattle. On this basis a reasonable rate on the shipments in question would have been 29.25 cents per 100 pounds.

We further find that the complainants, Leo Albrecht and Earl L. Cobel, copartners, made the shipments as described and paid and bore the charges thereon; that they were damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that they are entitled to reparation from the Northern Pacific Railway Company and the Chicago & North Western Railway Company in the sum of \$64.90, with interest. As the carriers concerned are now under federal control and the Director General of Railroads has not been made a party defendant no finding or order for the future can be made on these pleadings.

An order awarding reparation will be entered.

51 I. C. C.

No. 9942.
GERMAIN COMPANY
v.
LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

Submitted November 1, 1918. Decided December 9, 1918.

Following the principle applied in *Kern & Sons v. C. M. & St. P. Ry. Co.*, 40 I. C. C., 552; *Held*, That defendants should have permitted the diversion of carload shipments of lumber from Jemison, Ala., to Trenton, Nova Scotia, at Detroit, Mich., on basis of the through rate from Jemison to Trenton, plus a maximum charge of \$2 for the extra service incident to the diversion. Reparation awarded.

M. Riely for complainant.

D. P. Connell for Michigan Central Railroad Company.

R. Walton Moore for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HARLAN, AND HALL.

BY DIVISION 3:

The complainant, a corporation engaged in the lumber business at Pittsburgh, Pa., alleges, by complaint filed October 20, 1917, that an unreasonable and unjustly discriminatory rate was charged by the defendant carriers on a carload of yellow-pine lumber shipped August 28, 1916, from Jemison, Ala., to Detroit, Mich., thence forwarded to Trenton, Nova Scotia. Reparation is asked. By supplemental complaint filed subsequent to the hearing the Director General of Railroads was made a party defendant. He answered, but no further hearing was asked or had. Rates are stated in cents per 100 pounds.

The shipment originated at Jemison, a local point on the Louisville & Nashville Railroad and moved over the defendants' lines. It was originally consigned to complainant at Detroit, but prior to its arrival at that point over the Michigan Central Railroad, that carrier received a request from complainant to divert the car to Montreal, Canada. It was forwarded to Trenton, apparently through error of that defendant, but as the complainant accepted delivery at Trenton the shipment may be considered for the purposes of this proceeding as having been ordered diverted to that point. The original contents of the car remained unchanged and no out-of-line haul was necessary. The shipment weighed 97,100 pounds and charges were collected in the sum of \$555.42 at a combination rate of

57.2 cents, legally applicable, composed of a rate of 26.7 cents to Detroit and a sixth-class rate of 30.5 cents beyond. Contemporaneously a joint rate of 44 cents applied from Jemison to Trenton over the route of movement, and reparation is asked upon the basis of that rate.

The defendants' tariffs naming the above rates were governed as to reconsignment privileges by the tariffs of the individual lines. The tariffs of the Michigan Central then permitted the reconsignment and diversion of lumber at the through rate, except on shipments originating at certain points on the Louisville & Nashville and other specified carriers.

In numerous cases we have required carriers to provide in their tariffs for reconsignment or diversion at the through rate plus a reasonable charge for the additional services incident to the change in destination. Upon the record, and following *Kern & Sons v. C. M. & St. P. Ry. Co.*, 40 I. C. C., 552, and the *Reconsignment Case*, 47 I. C. C., 590, we find that the defendants' tariff rules were unreasonable in that they did not provide that shipments of lumber, in carloads, from Jemison to Detroit would be diverted at that point to Trenton on the basis of the through rate contemporaneously in effect from Jemison to ultimate destination, plus an additional maximum charge of \$2 for the diversion service, provided the contents of the car remained unchanged, no out-of-line haul was necessary, and the request for the diversion was received prior to the arrival of the car at Detroit, which rule and charge we find would have been reasonable. We further find that the complainant made the shipment as described and paid and bore the charges thereon; that such charges were unreasonable and that complainant was damaged to the extent that the charges paid exceeded those that would have accrued at the joint rate of 44 cents per 100 pounds, plus the maximum charge of \$2 herein found reasonable; and that complainant is entitled to reparation in the sum of \$126.18, with interest.

As the defendants' tariffs now provide for diversion at Detroit on the above basis in connection with carload shipments of lumber from and to the points in question, no order for the future is necessary.

An order awarding reparation will be entered.

51 I. C. C.

No. 9587.

RELIANCE MANUFACTURING COMPANY

v.

ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

PORTIONS OF FOURTH SECTION APPLICATIONS

Nos. 2045, 3965, 1548, 3912, 1561, AND 4966.

Submitted October 7, 1918, Decided October 29, 1918.

1. Rates on cotton piece goods, any quantity, from Danville, Va., and points taking the same rate, to Eddyville, Ky., attacked in original complaint not shown to have been unreasonable or unduly prejudicial, except that the rate applicable prior to June 29, 1916, was unreasonable to the extent that it exceeded the aggregate of the rates subject to the act contemporaneously in effect to and from Paducah, Ky. Reparation awarded.
2. There being no evidence of record upon the issues presented by the supplemental complaint as to the justness and reasonableness of certain rates initiated by the Director General, and the question of the burden of proof in respect of such rates not having been raised or argued, that question is reserved for determination in a proceeding where it shall have been fully presented, and no finding or order is made as to the justness or reasonableness of such rates.

John S. Burchmore, Luther M. Walter, and B. F. Grubbs for complainant.

R. Walton Moore and Frank W. Gwathmey for defendant carriers.

R. Walton Moore for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HARLAN, HALL, AND ANDERSON.

BY DIVISION 3:

The complainant, a corporation engaged in manufacturing work shirts and overalls at Eddyville, Ky., alleges by complaint, seasonably filed, that the rates charged by the defendants on numerous shipments of cotton piece goods from Danville, Va., and points taking the same rate, to Eddyville, within two years prior to the filing of the complaint, were illegal, unreasonable, unduly prejudicial to Eddyville and preferential of Paducah, Ky., and other points named in the same tariff, and in violation of the long-and-short-haul rule of the fourth section. Reparation and the establishment of reasonable rates are asked. Those portions of Fourth Section Applications Nos. 2045 of the Illinois Central Railroad Company, 3965 of the Cincinnati, New Orleans & Texas Pacific Railway Company, 1548

of the Southern Railway Company, 3912 of the Tennessee Central Railroad Company, 1561 of the Norfolk & Western Railway Company, and 4966 of the Chesapeake & Ohio Railway Company, by which authority is sought to continue to charge for the transportation of cotton piece goods from Danville and points taking the same rate to Paducah, rates which are lower than the rates contemporaneously maintained on like traffic to Eddyville and other intermediate points, were set for hearing with the complaint. Rates are stated in cents per 100 pounds and apply on any quantity.

The defendants object to the sufficiency of the complaint to raise an issue of undue preference of points other than Paducah. The tariff publishing the rates to Paducah named rates to a great many other points in several states and the mere reference to this tariff was not sufficient to advise the defendants of the violations of the act relied upon as required by rule III of the Rules of Practice.

Eddyville is a local station on the Illinois Central, 33 miles east of Paducah, to which it is directly intermediate from Danville by the route of movement. The shipments moved over the Southern and Cincinnati, New Orleans & Texas Pacific to Louisville, Ky., and beyond over the Illinois Central, 847 miles. Charges were collected on the shipments made between May 18, 1915, and July 1, 1916, inclusive, at a rate of 76 cents, and on those made prior and subsequent to that period at a rate of 74 cents. A joint commodity rate of 76 cents was legally applicable prior to June 29, 1916, and 74 cents thereafter. The shipments made prior to June 29, 1916, on which the 74-cent rate was applied, were undercharged 2 cents per 100 pounds. It also appears that a transfer charge of 3 cents was collected at Louisville, for which there was no tariff authority. The record does not disclose upon what shipments this charge was applied, but such transfer charges as were collected should be promptly refunded, with interest. There were contemporaneously in effect during the entire period of movement a joint commodity rate of 59 cents from Danville to Paducah, applicable over the route of movement through Eddyville, and a local fourth-class rate of 15 cents from Paducah to Eddyville, applicable on cotton piece goods, the combination of which is said by the defendants to be the basis for the joint commodity rate to Eddyville. Prior to June 29, 1916, the 74-cent combination on Paducah would have applied to Eddyville in the absence of the joint rate of 76 cents, under rule 5 (b) of Tariff Circular 18-A.

The complainant relies almost entirely upon the fourth section departures and a comparison of the rate to Eddyville with the rates to Paducah, to other Ohio River crossings, which generally were the same as to Paducah, and to points in central freight association territory which were based on a proportional rate of 45 cents to the

Ohio River, plus the local rates beyond. The defendants submitted numerous comparisons showing that the rate from Danville to Eddyville compared favorably with the rates for corresponding distances from Danville and other southern mill points to points in the south, including points intermediate to Eddyville, and from Chicago, Ill., and Ohio and Mississippi River crossings to points in the south and southwest. They also cited rates from southern mill points, Texas common points, and St. Louis, Mo., to points in central freight association territory and in the west, with which the rates assailed also compared favorably, distance considered. It was shown that the general basis for making rates on cotton piece goods from southern mill points to points south of the Ohio River is fourth class, except where the combination of the rates to and from the Ohio River crossings makes lower. Evidence was introduced to show that the rates to Paducah and other Ohio River crossings were subnormal in comparison with the general level of rates in the south, for reasons hereinafter stated. In *Mayfield & Graves County Commercial Club v. B. & O. R. R. Co.*, 48 I. C. C., 45, we stated that there is constant and active water competition on the Cumberland River between Paducah and Eddyville. The defendants show that the fourth-class rate from Paducah to Eddyville was substantially lower than the corresponding rates for the same or greater distances between other points in the same general territory.

There are no manufacturers of work shirts or overalls at Paducah, and it was not shown that there is any movement of cotton piece goods from Danville or points taking the same rate to Paducah.

The defendants seek to justify the maintenance of rates to the Ohio River crossings and points in central freight association territory lower than to intermediate points south of the Ohio River on the ground that such rates were depressed to meet the rates of the carriers serving New England mill points. They state that such competition does not exist to the same extent south of the Ohio River, as the rates from New England mill points to points south of the river are based on the combination rates to and from the river crossings. At the time the complaint was filed the rates from Boston, Mass., to Cincinnati, Ohio, and Paducah, were 50.5 and 69.7 cents, respectively. It is said that the normal basis for the rate from Boston to Eddyville is the combination on Paducah, which was 84.7 cents, but that a commodity rate of 74 cents was in effect during the period of movement, and that through error a class rate of 59 cents became effective March 15, 1917. At the time of the hearing the rate from Atlanta, Ga., to Cincinnati, which controls the adjustment from the southeast, was 49 cents, and the rates to other Ohio River crossings were made the same as to Cincinnati, in accordance with the general southeastern adjustment. The rates from Danville to the Ohio River crossings are based

on a differential of 10 cents over the rates from Atlanta, subject to the combination on Lynchburg, Va., as maximum, which differential also applies from North Carolina points and most points in South Carolina. The history, purpose, and general character of this adjustment were explained in *Mayfield & Graves County Commercial Club v. A. & V. Ry. Co.*, 51 I. C. C., 326, hereinafter called the *Mayfield Case*. The defendants also submitted numerous comparisons to show that transportation conditions are much more favorable and the general level of rates considerably lower in the territory through which the carriers serving the New England mill points operate than in the south. They also contend that any disturbance of the existing adjustment would necessarily be far-reaching in its effect upon the rates from and to many other points of origin and destination, and would materially affect the revenues of the carriers. The remarkable growth of the cotton-mill industry of the south is attributed largely to the relative rate adjustment with the New England mills and the continued prosperity of the industry is said to be dependent upon the continuance of such adjustment. Since the hearing the rates from Boston have been increased to 58 cents to Cincinnati and 80.1 cents to Paducah, following *The Fifteen Per Cent Case*, 45 I. C. C., 303. The southeastern carriers are now engaged in revising their rates to the Ohio River and central freight association territory properly to align them with the increased rates of the carriers serving the New England mill points and with the revision of southbound rates required by *Fourth Section Violations in the Southeast*, 30 I. C. C., 153.

In the *Mayfield Case* we found that the rates on cotton-factory products from points in the south and southeast to Mayfield, Ky., a point on the Illinois Central, 23 miles south of Paducah, had not been shown to be unreasonable, but that they were unduly prejudicial to the extent that they exceeded the rates to Paducah by more than 18 cents. That portion of the fourth section application of the Illinois Central whereby authority is sought to continue to charge lower rates on cotton-factory products from the points of origin involved to Paducah than to Mayfield and other intermediate points was heard with that case, but we reserved that question for consideration upon a more-comprehensive record. The record in this case does not differ very materially from the record in the *Mayfield Case*. While other fourth section applications were heard with this case, those portions of the applications covering the rates from Atlanta to Cincinnati are not before us, nor are the Louisville & Nashville and the Nashville, Chattanooga & St. Louis railroads, the Atlanta-group base lines, parties to this case. The fourth section applications will be reserved for consideration upon a more comprehensive record.

By supplemental complaint filed with our permission on September 9, 1918, the Director General was made a party defendant. In said supplemental complaint, the complainant refers to General Order No. 28, as amended, wherein the Director General, in the exercise of powers conferred upon the President by the federal control act, initiated increased rates, and alleges that:

Under the rates as so advanced, the discriminations and preferences complained of in the original petition in this proceeding are not removed or corrected, but to the extent that the same are unchanged, they are magnified and increased.

The said rates as so increased are unjust and unreasonable in violation of section 1 of the act to regulate commerce, and in violation of section 10 of the aforesaid act, approved March 21, 1918.

The answer of the Director General is, in substance, the same as that made by him and referred to in *Willamette Valley Lumbermen's Assn. v. S. P. Co.*, 51 I. C. C., 250, and need not be repeated here. No further hearing was requested or had.

Under section 10 of the federal control act it is provided, among other things:

That when the President shall find and certify to the Interstate Commerce Commission that in order to defray expenses of federal control and operation fairly chargeable to railway operating expenses, and also to pay railway tax accruals other than war taxes, net rents for joint facilities and equipment, and compensation to the carriers, operating as a unit, it is necessary to increase the railway operating revenues, the Interstate Commerce Commission in determining the justness and reasonableness of any rate, fare, charge, classification, regulation or practice shall take into consideration said finding and certificate by the President, together with such recommendations as he may make.

Such a finding and certificate by the Director General were incorporated in his General Order No. 28.

We find that the rates legally applicable are not shown to have been unreasonable or unduly prejudicial except that the rate of 76 cents per 100 pounds applicable prior to June 29, 1916, was unreasonable to the extent that it exceeded the aggregate of the rates subject to the act contemporaneously in effect to and from Paducah. Upon the issues presented by the supplemental complaint as to the justness and reasonableness of certain rates initiated by the Director General there is no evidence of record. We are therefore unable to determine whether or not they are just or reasonable, or, if not, to what extent. The question of the burden of proof in respect of such rates has not been raised or argued in this proceeding and has not been decided heretofore. We therefore reserve it for determination in a proceeding where it shall have been fully presented. For these reasons no finding or order will be made herein as to the justness or reasonableness of the rates assailed in the supplemental complaint.

We further find that the shipments were made as described; that complainant paid and bore the charges thereon and was damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined upon this record, and the complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, also showing the dates on which the charges were paid, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified, we will consider the entry of an order awarding reparation. Collection of the undercharges mentioned may be waived.

No. 9973.

C. W. HULL COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
ET AL.

Submitted March 29, 1918. Decided December 9, 1918.

1. Rate legally applicable on blacksmith coal, in carloads, from Duluth, Minn., to Muncie, Kans., found to have been unreasonable.
2. One shipment found to have been misrouted by the initial carrier.
3. Reparation awarded.

C. E. Childe for complainant.

C. B. Matthai for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HARLAN, AND HALL.

By DIVISION 3:

The complainant, a corporation engaged in the coal business at Omaha, Nebr., alleges by complaint filed November 16, 1917, as amended, that unreasonable and unduly prejudicial charges were collected by the defendants on two carloads of blacksmith coal shipped December 16 and 18, 1915, from Duluth, Minn., to Muncie, Kans. Reparation and the establishment of a reasonable rate are asked. Rates are stated in amounts per net ton, except as otherwise specified.

51 I. C. C.

Muncie is on the Union Pacific Railroad, 9 miles west of Kansas City, Mo. The shipments were routed by the shipper over the Chicago, Milwaukee & St. Paul Railway, hereinafter called the Milwaukee, in care of the Union Pacific at Kansas City. One car, weighing 84,500 pounds, moved as routed by the shipper; the other, weighing 69,800 pounds, moved over the Milwaukee to Council Bluffs, Iowa, and the Union Pacific beyond through Lincoln, Nebr., and Marysville, Kans., and was therefore misrouted by the Milwaukee. Charges were collected in the sum of \$339.46, based on the joint class D rate of 22 cents per 100 pounds. Agent Boyd's tariff, which published the class D rate, stated that it did not contain any rates on coal. The rate charged was inapplicable. The legally applicable combination rate through Kansas City was \$4.35, composed of rates of \$1.60 to Mason City, Iowa; \$1.50 from Mason City to Foster, Iowa; 85 cents from Foster to Kansas City, and 40 cents beyond. The legally applicable combination rate through Lincoln was \$4.20, composed of rates of \$2.70 to Lincoln and \$1.50 beyond. The shipments were overcharged \$9.09. Each component of the combination rates was subsequently increased 15 cents, following *The Fifteen Per cent Case*, 45 I. C. C., 803.

The complainant shows that, generally speaking, the rates on coal from Duluth to points in Nebraska and northern Kansas were 20 cents higher than rates from Chicago to the same destinations, and contends that this was the usual basis for rates on coal from Duluth to points west of the Missouri River. The rate on coal from Chicago to Muncie was \$2.35, and it is upon the basis of 20 cents over that rate, or \$2.55, that the complainant seeks reparation. The complainant also shows that the rate on coal from Chicago to Muncie was \$1.35 less than the class D rate and that substantially the same relation was maintained from Chicago to other destinations in Kansas and Nebraska and from Duluth to destinations to which commodity rates were published. The defendants' witness admitted that in view of the fact that the short-line distances from Duluth to Marysville and Muncie were approximately the same he saw no objection to making the same rate to the latter as to the former provided there was a necessity for it, but he denies that the volume of movement was sufficient to justify any commodity rate to Muncie. It is not shown what volume of movement justifies the maintenance of commodity rates to Nebraska and northern Kansas.

The commodity rate on coal from Duluth to Omaha, Nebr., was \$2.60 for a short-line distance of 497 miles, earning 5.23 mills per ton-mile. This rate was graded up to \$3.348 at Marysville in northern Kansas for 657 miles, the short-line distance, earning 5.10 mills per ton-mile. Marysville is 139 miles northwest of Muncie. The

short-line distance from Duluth to Muncie is 643 miles, and is by way of Kansas City. The short-line distance over the defendants' lines through Kansas City is 752 miles, and through Council Bluffs, 900 miles. It will be noted that the distance over the route specified by the shipper was about 17 per cent greater than the short-line distance. The \$4.35 rate applicable over the Kansas City route yielded ton-mile earnings of 5.78 mills.

We find that the rate legally applicable over the Kansas City route was unreasonable to the extent that it exceeded \$3.85 per net ton; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rates herein found reasonable over the Kansas City route; and that it is entitled to reparation, from both the defendants in the sum of \$30.22, with interest, which amount includes the difference between the rate legally applicable to the shipment that moved through Kansas City and the rate found reasonable over that route and the outstanding overcharges on both shipments; and from the Chicago, Milwaukee & St. Paul Railway Company in the sum of \$12.21, with interest, which is the difference between the charges legally applicable on the shipment through Council Bluffs and those found reasonable over the route it would have moved had not the Milwaukee misrouted it. The carriers named are now under federal control and an opportunity was afforded to amend the complaint by making the Director General of Railroads a party defendant. As no amendment was filed no finding or order for the future can be made on these pleadings.

An order awarding reparation will be entered.

51 I. C. C.

Muncie is on the Union Pacific Railroad, 9 miles west of Kansas City, Mo. The shipments were routed by the shipper over the Chicago, Milwaukee & St. Paul Railway, hereinafter called the Milwaukee, in care of the Union Pacific at Kansas City. One car, weighing 84,500 pounds, moved as routed by the shipper; the other, weighing 69,800 pounds, moved over the Milwaukee to Council Bluffs, Iowa, and the Union Pacific beyond through Lincoln, Nebr., and Marysville, Kans., and was therefore misrouted by the Milwaukee. Charges were collected in the sum of \$339.46, based on the joint class D rate of 22 cents per 100 pounds. Agent Boyd's tariff, which published the class D rate, stated that it did not contain any rates on coal. The rate charged was inapplicable. The legally applicable combination rate through Kansas City was \$4.35, composed of rates of \$1.60 to Mason City, Iowa; \$1.50 from Mason City to Foster, Iowa; 85 cents from Foster to Kansas City, and 40 cents beyond. The legally applicable combination rate through Lincoln was \$4.20, composed of rates of \$2.70 to Lincoln and \$1.50 beyond. The shipments were overcharged \$9.09. Each component of the combination rates was subsequently increased 15 cents, following *The Fifteen Per cent Case*, 45 I. C. C., 303.

The complainant shows that, generally speaking, the rates on coal from Duluth to points in Nebraska and northern Kansas were 20 cents higher than rates from Chicago to the same destinations, and contends that this was the usual basis for rates on coal from Duluth to points west of the Missouri River. The rate on coal from Chicago to Muncie was \$2.35, and it is upon the basis of 20 cents over that rate, or \$2.55, that the complainant seeks reparation. The complainant also shows that the rate on coal from Chicago to Muncie was \$1.35 less than the class D rate and that substantially the same relation was maintained from Chicago to other destinations in Kansas and Nebraska and from Duluth to destinations to which commodity rates were published. The defendants' witness admitted that in view of the fact that the short-line distances from Duluth to Marysville and Muncie were approximately the same he saw no objection to making the same rate to the latter as to the former provided there was a necessity for it, but he denies that the volume of movement was sufficient to justify any commodity rate to Muncie. It is not shown what volume of movement justifies the maintenance of commodity rates to Nebraska and northern Kansas.

The commodity rate on coal from Duluth to Omaha, Nebr., was \$2.60 for a short-line distance of 497 miles, earning 5.23 mills per ton-mile. This rate was graded up to \$3.348 at Marysville in northern Kansas for 657 miles, the short-line distance, earning 5.10 mills per ton-mile. Marysville is 139 miles northwest of Muncie. The

short-line distance from Duluth to Muncie is 643 miles, and is by way of Kansas City. The short-line distance over the defendants' lines through Kansas City is 752 miles, and through Council Bluffs, 900 miles. It will be noted that the distance over the route specified by the shipper was about 17 per cent greater than the short-line distance. The \$4.35 rate applicable over the Kansas City route yielded ton-mile earnings of 5.78 mills.

We find that the rate legally applicable over the Kansas City route was unreasonable to the extent that it exceeded \$3.85 per net ton; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rates herein found reasonable over the Kansas City route; and that it is entitled to reparation, from both the defendants in the sum of \$30.22, with interest, which amount includes the difference between the rate legally applicable to the shipment that moved through Kansas City and the rate found reasonable over that route and the outstanding overcharges on both shipments; and from the Chicago, Milwaukee & St. Paul Railway Company in the sum of \$12.21, with interest, which is the difference between the charges legally applicable on the shipment through Council Bluffs and those found reasonable over the route it would have moved had not the Milwaukee misrouted it. The carriers named are now under federal control and an opportunity was afforded to amend the complaint by making the Director General of Railroads a party defendant. As no amendment was filed no finding or order for the future can be made on these pleadings.

An order awarding reparation will be entered.

51 I. C. C.

No. 10014.
AETNA EXPLOSIVES COMPANY
v.
PENNSYLVANIA RAILROAD COMPANY ET AL.

Submitted November 8, 1918. Decided December 4, 1918.

Less-than-carload shipment of high explosives transported over an interstate route from Emporium, Pa., to Thomasville, Pa., found to have been mis-routed. Reparation awarded.

George G. Reynolds for complainants.

George R. Allen for Pennsylvania Railroad Company and Cumberland Valley Railroad Company.

R. Walton Moore for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HARLAN, AND HALL.

BY DIVISION 3:

The complainants are George C. Holt and Benjamin B. Odell, receivers of the Aetna Explosives Company, a corporation formerly engaged in the manufacture of explosives. By complaint filed December 28, 1917, as amended, they allege that, due to misrouting, unreasonable charges were collected by the defendants on a less-than-carload lot of high explosives shipped December 30, 1915, from Emporium, Pa., to Thomasville, Pa. They ask reparation and the establishment of reasonable rates. By supplemental complaint filed after the hearing with our permission the Director General of Railroads was made a party defendant. No further hearing was asked or had. Rates are stated in amounts per 100 pounds.

The shipment, weighing 4,640 pounds, was routed in the bill of lading, "PRR c/o W.M." It moved over the Pennsylvania Railroad to Harrisburg, Pa.; the Cumberland Valley Railroad to Hagerstown, Md.; and the Western Maryland Railway beyond. Charges were collected in the sum of \$61.43, at a combination rate of \$1.324, composed of rates of 73.6 cents to Hagerstown and 58.8 cents beyond. The Public Service Commission of Pennsylvania certifies that there was contemporaneously in effect a combination intrastate rate of 92.6 cents, made up of rates of 73.6 cents over the Pennsylvania to Hanover, Pa., and 19 cents over the Western Maryland beyond.

It was asserted for the Pennsylvania that the shipment was transported by way of Hagerstown because the Western Maryland failed to quote a rate from Hanover as requested by the Pennsylvania in March, 1915, and, subsequent to the movement of this shipment, advised that it would not accept shipments of this nature from the Pennsylvania at Hanover.

Apparently the defense of the Pennsylvania is that its rates to Hagerstown and Hanover were the same, and that, having acted in good faith, it should not be penalized for any misrouting that may have resulted. It is not shown that there was any tariff restriction or embargo against the interchange of traffic of this nature between the Pennsylvania and the Western Maryland at Hanover. The routing specified by the shipper was complete, and it was the Pennsylvania's duty to deliver the shipment direct to the Western Maryland at Hanover. The Western Maryland was not represented at the hearing. No evidence was introduced to show that the rate charged over the route of movement was unreasonable.

We find that the rate over the route of movement is not shown to have been unreasonable, but that the Pennsylvania Railroad Company misrouted the shipment. We further find that the Aetna Explosives Company made the shipment as described and paid and bore the charges thereon; that it was damaged by the misrouting to the extent of the difference between the charges paid and those that would have accrued had the shipment been forwarded over the intrastate route described; and that George C. Holt and Benjamin B. Odell, its receivers, are entitled to reparation from the Pennsylvania Railroad Company and William G. McAdoo, Director General of Railroads, in the sum of \$18.46, with interest. An order will be entered accordingly.

51 I. C. C.

No. 10071.

VIRGINIA-CAROLINA CHEMICAL COMPANY

v.

ALABAMA & VICKSBURG RAILWAY COMPANY ET AL.

Submitted July 18, 1918. Decided December 9, 1918.

Rates on sulphuric acid, in tank-car loads, from Shreveport, La., to Ensley, Ala., found to have been unreasonable. Reparation awarded.

H. W. B. Glover for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HARLAN, AND HALL.

BY DIVISION 3:

The complainant, a corporation engaged in the manufacture of sulphuric acid at Shreveport, La., by its complaint seasonably filed, seeks reparation, alleging that the rates charged by the defendants on 30 tank-car loads of sulphuric acid shipped from Shreveport to Ensley, Ala., between December 7, 1915, and February 19, 1916, inclusive, were unreasonable to the extent that they exceeded \$4 per net ton, the rate subsequently established. Rates are stated in amounts per net ton unless otherwise specified.

The shipments moved over the Vicksburg, Shreveport & Pacific and the Alabama & Vicksburg railways and the Alabama Great Southern Railroad. On 6 of the shipments, which moved between December 7 and 13, 1915, inclusive, charges were assessed in the sum of \$2,414.27, based upon an aggregate weight of 561,445 pounds at the applicable combination rate of \$8.60, composed of the fourth-class rate of 30 cents per 100 pounds, equivalent to \$6 per net ton, governed by the western classification, from Shreveport to Vicksburg, Miss., and a commodity rate of \$2.60 beyond. On the other 24 shipments, which moved between December 25, 1915, and February 19, 1916, inclusive, charges were assessed in the sum of \$4,958.81 based upon an aggregate weight of 2,156,008 pounds, at the applicable combination rate of \$4.60, composed of commodity rates of \$2 from Shreveport to Jackson, Miss., and \$2.60 beyond.

Prior to this movement the complainant requested the defendants to establish a commodity rate of \$3.60 from Shreveport to Birmingham, Ala., and grouped points, including Ensley, based upon the so-

called unpublished distance scale of rates prescribed between points in the southeast in *International Agricultural Corporation v. L. & N. R. R. Co.*, 22 I. C. C., 488, and described in *Sulphuric Acid from New Orleans, La.*, 42 I. C. C., 200. The defendants agreed to establish a rate of \$4, but this rate did not become effective to Birmingham until February 4, 1916, and to Ensley until February 29, 1916. It remained in effect until June 25, 1918, when it was increased under General Order No. 28 issued by the Director General of Railroads. The present rate is not assailed.

The ton-mile yield under the \$8.60 rate is compared below with the earnings under the \$4 rate subsequently established to Ensley and with rates from other points:

To Ensley from—	Rate.	Distance.	Ton-mile earnings.
		Miles.	Mills.
Shreveport, La.....	\$8.60	462	18.6
Do.....	4.00	.....	8.7
New Orleans, La.....	2.85	355	8.0
Natchez, Miss.....	2.60	345	7.5
Memphis, Tenn.....	2.25	251	9.0
Cincinnati, Ohio.....	3.45	479	7.2

We find that the rates assailed were unreasonable to the extent that they exceeded \$4 per net ton. We further find that the complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent that the charges paid exceeded those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$1,938.17, with interest.

An order awarding reparation will be entered.

51 I. C. C.

No. 9952.

CARTHAGE MARBLE & WHITE LIME COMPANY
v.
MISSOURI PACIFIC RAILROAD COMPANY ET AL.

Submitted October 18, 1918. Decided November 30, 1918.

Two carloads of cut stone from Carthage, Mo., to Pasadena, Cal., found to have been overcharged. Reparation awarded.

Richard A. Jones and C. F. Wescoat for complainant.

Henry G. Herbel, Fred G. Wright, C. C. P. Rausch, and George O. Somers for defendant railroads.

R. Walton Moore for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HARLAN, AND HALL.

BY DIVISION 3:

The complainant, a corporation operating a quarry at Carthage, Mo., in its complaint, seasonably filed, as amended, seeks reparation for alleged unreasonable charges collected by the defendants on two carloads of cut stone shipped from Carthage to Pasadena, Cal., in September and October, 1915. Rates are stated in amounts per 100 pounds.

The shipments, which weighed 47,000 and 38,100 pounds, respectively, consisted of 420 pieces cut to specifications, dressed, rubbed smooth, but not lettered or polished, with ends joined or finished, ready to be put in place, for steps, windows, border and other parts of terrace entry, and porches of a dwelling house in Pasadena. They were delivered to the Missouri Pacific Railroad at Carthage and moved over defendants' lines. Complainant billed them as "cut stone" and inserted in the bill of lading a rate of 50 cents, which rate, subject to a minimum of 50,000 pounds, was legally applicable on that commodity from and to these points. At destination the description was changed to "marble," and charges were accordingly collected in the sum of \$851, at the rate of \$1 applicable on marble. The sole issue for determination is whether the material shipped was stone or marble.

For the complainant it was stated that its stone, which is the same as other stone quarried in the vicinity of Carthage, is a good quality of limestone, used principally for exterior building purposes. It will

take a polish, and when cut across the bed shows veining not unlike that of marble. But it contains crowfoot veins, which separate if the stone is cut across the grain and prohibit its use in large slabs when so cut. For the past two or three years slabs not exceeding two inches in thickness, cut with the bed, have been polished and used for floors, toilet rooms, and the cheaper grades of interior work in the place of marble. For complainant it was testified that this was the first shipment it had made to the Pacific coast; that all similar shipments previously made to Minnesota, Colorado, Texas, and other states were billed as stone, and charges paid at the rates on stone; that the individual tariffs of the initial line do not name rates on marble from this district, but do distinguish between stone polished and lettered and other stone; that the initial line has always treated this stone as ordinary cut stone, and in the present instance did not question the billing or the rate inserted by the shipper; and that the description was changed at destination by persons who were not familiar with the output of Carthage quarries.

The defendants' witness testified that samples of the shipments were examined and polished by experts on the Pacific coast, who identified the material as marble. He introduced in evidence price lists, one of complainant showing that its product is advertised as "imperial gray marble," and another of a marble dealer on the Pacific coast showing prices of various marbles, including "Missouri gray marble" which is quoted at \$8.50 per cubic foot from the saw. The contract price for these shipments was \$4 per cubic foot f. o. b. Pasadena.

Evidence was adduced as to the difference in composition of limestone and marble. Carthage limestone has not been fused or otherwise metamorphosed, and, therefore, does not meet the technical definition of marble. The grades of limestone and marble vary, and it is difficult to distinguish between the better grades of limestone and the poorer grades of marble.

We find that the shipments consisted of cut stone, and that the rate of 50 cents per 100 pounds, minimum 50,000 pounds, was legally applicable. We further find that the complainant made the shipments as alleged, and paid and bore the charges thereon; that it has been damaged and is entitled to reparation in the sum of \$351, with interest.

An appropriate order will be entered.

51 I. C. C.

No. 9759.¹

E. I. DU PONT DE NEMOURS POWDER
COMPANY ET AL.

v.

PHILADELPHIA & READING RAILWAY COMPANY ET AL.

Submitted November 26, 1918. Decided December 4, 1918.

Charges collected on certain shipments of nitrate of potash in carloads, from Montchannin, Del., to Dupont, Wash., found to have been unreasonable. Reparation awarded.

Harvey S. Farrow for complainants.

B. W. Scandrett for defendant carriers.

R. Walton Moore for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HARLAN, AND HALL.

BY DIVISION 3:

Complainants are E. I. Du Pont de Nemours & Company, a corporation engaged in the manufacture of explosives, with a plant at Montchannin, Del., and its predecessor, E. I. Du Pont de Nemours Powder Company. By complaints, seasonably filed, they allege that the rate of \$1.90 per 100 pounds charged by the defendants on 23 carloads of nitrate of potash shipped between May 15, 1915, and May 15, 1916, inclusive, from Montchannin to Dupont, Wash., was unreasonable and unjustly discriminatory to the extent that it exceeded 75 cents. Reparation and a reasonable rate are asked. By supplemental complaint filed on September 14, 1918, with our permission the Director General was made a party defendant, and the complainant consented to the increase as provided in General Order No. 28 of the rate for the future prayed in the original complaint. The answer thereto of the Director General denies that complainant is entitled to relief and prays that the original complaint and supplemental complaint be dismissed. No further hearing was asked or had. Rates are stated in amounts per 100 pounds.

The shipments consisted of nitrate of potash, a chemical otherwise known as potassium nitrate or saltpeter. They moved over the defendants' lines from Montchannin, a local station on the Philadelphia & Reading Railway 7 miles south of Philadelphia, Pa., to Du-

¹ This report also embraces No. 9759 (Sub-No. 1), Same v. Philadelphia & Reading Railway Company et al.

pont, now called American Lake, on the Northern Pacific Railway 16 miles south of Tacoma, Wash. Traffic from and to these points takes the rates applicable from the Atlantic seaboard to north Pacific coast terminals. During the period between May 16 and December 26, 1915, inclusive, a commodity rate of \$1.50 applied on chemicals, in carloads, minimum 24,000 pounds, from the Atlantic seaboard to the north Pacific coast and California terminals. On December 27, 1915, the rate to the north Pacific coast terminals was reduced to \$1.20. Charges were ultimately collected on these legally applicable bases. On March 15, 1918, the \$1.20 rate on chemicals was increased to \$1.85.

Prior to November 15, 1914, a commodity rate of 80 cents, minimum 30,000 pounds, applied on nitrate of potash, in carloads, from the Atlantic seaboard to California and north Pacific coast terminals. On that date this rate was canceled, leaving applicable on this traffic the rate on chemicals. On June 7, 1916, a commodity rate of 75 cents, minimum 80,000 pounds, was established on nitrate of potash, in carloads, from the Atlantic seaboard to the California terminals. On March 15, 1918, this rate was increased to \$1.10, and the same rate was established from the Atlantic seaboard to north Pacific coast terminals. Complainants contend that the rate complained of should not have exceeded 75 cents, the rate established to California terminals subsequent to the movement of the shipments in question.

On behalf of the defendants it was testified that the former 80-cent rate was established to meet water competition and was low; that it was canceled because the water competition had ceased; and that there was no justification for a lower rate on this traffic than on other chemicals, the rate on which at that time was lower to the destination in question than to intermediate points. The defendants also show that this traffic is inflammable and that a carload of it moving from and to the same points and at the same time as these shipments was destroyed by fire at a point on the Northern Pacific, and that the damages paid therefor by the latter carrier exceeded its revenue on all the shipments in question.

In *Transcontinental Rates*, decided June 30, 1917, 46 I. C. C., 236, we held that under the then existing conditions the carriers were not justified in further continuing rates on these commodities to the Pacific coast which were lower than to intermediate points. Subsequently the carriers made application for permission to file tariffs containing increased rates on such commodities, which should conform to the requirements of the fourth section. Among these commodities was nitrate of potash to California terminals, the proposed rate on which was \$1.10. As a result of the application and the hearings thereon, we authorized the carriers to make the in-

creases proposed in the rates on this commodity. *Transcontinental Commodity Rates*, 48 I. C. C., 79. As stated, the \$1.10 rate was also established to north Pacific coast terminals. We are of the opinion that the rates applied on these shipments were unreasonably high and that the maximum which should have been applied during this period should not have exceeded \$1.10 per 100 pounds.

We further find that the complainants made the shipments as described and paid and bore the charges thereon; that they have been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that E. I. Du Pont de Nemours & Company is entitled to reparation, with interest. The exact amount of reparation due can not be determined upon the present record, and the above-named complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the date on which the charges were paid, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified, we will consider the entry of an order awarding reparation.

No. 9762.

HELVETIA MILK CONDENSING COMPANY

v.

ALABAMA & VICKSBURG RAILWAY COMPANY ET AL.

Submitted December 2, 1918. Decided December 4, 1918.

Southern classification ratings of fifth and third class applied by the defendants on liquid condensed or evaporated milk, in metal cans in barrels or boxes, in carloads and less than carloads, respectively, not shown to be unreasonable. Complaint dismissed.

C. H. Rodehaver for complainant.

William Burger for defendant carriers.

R. Walton Moore for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HARLAN, AND HALL.

By DIVISION 3:

The southern classification fifth and third class ratings applied by the defendants on condensed or evaporated milk, liquid, in metal cans in barrels or boxes, in carloads and less than carloads, respectively, are assailed herein as unjust and unreasonable and ratings of sixth and fourth class, respectively, are asked. By supplemental complaint filed subsequent to the hearing with our permission the Director General was made a party defendant and the present ratings on this traffic were similarly assailed. The parties submitted the case on the original record.

The complainant has plants at Highland and Greenville, Ill.; Delta, Ohio; Wellsboro and Westfield, Pa.; Hudson and Wayland, Mich.; and New Glarus, Wis., from which it ships approximately 36,000,000 pounds of condensed milk annually to the south and southeast, one-fourth of which moves in carload and the remainder in less-than-carload lots. The milk is packed in tin cans and assembled for shipment in wooden or fiber-board boxes. Condensed milk does not freeze or require refrigerator service in that territory and ordinarily moves in box cars. It is sold at a uniform price per can, without regard to the point from which shipped or the freight rate to destination.

Joint through commodity rates are published from the complainant's plants to the Mississippi Valley, but to points east thereof rates

are made on East St. Louis, Ill., or on the Ohio River. The components to the junction and the commodity components thence to destination are not attacked, the sole issue being the class components applicable beyond the Ohio River in the absence of commodity rates.

The southern and official classifications rate milk, condensed or evaporated, liquid, in metal cans in boxes or barrels, third class in less than carloads and fifth class in carloads, minimum 36,000 pounds. Under exceptions to the official classification less-than-carload shipments are generally rated rule 26, or 20 per cent less than third class. In the western classification this commodity is rated fourth class in less than carloads and fifth class in carloads, minimum 36,000 pounds.

For the complainant it was testified that on less-than-carload shipments rule 26 is next to the lowest of the ratings usually applied in official classification territory; that fourth class is the lowest of the ratings usually applied in western classification territory; and that third class is fourth from the lowest rating, sixth class ordinarily applying in southern classification territory.

The complainant shows that of the articles rated in the official classification rule 26 in less than carloads, 24 per cent are rated third class, 10 per cent higher and 66 per cent lower than third class in the southern classification. From this the complainant urges that the southern classification less-than-carload rating is on a higher basis than the official. The complainant also compares the carload rating in southern classification with those applicable under the other classifications. It also shows that to Ohio River crossings less-than-carload and carload commodity rates are published which are lower than the respective class rates.

For the defendants it was shown that fourth class in the southern classification covers material in the natural form which is used for the manufacture of other articles, such as crude chalk and bark; natural material; waste material, such as apple cores and tomato refuse; articles in form suitable to be converted into other commodities, such as broom splints, lead, zinc, dyewoods, and paper filler; and coarse manufactured articles. Also, that sixth class is the lowest carload merchandise rating in the southern classification and applies on crude and partly manufactured articles of low value. It is urged that condensed milk is a concentrated food product which, all classification elements considered, is not comparable with the commodities taking fourth class in less than carloads or sixth class in carloads but is comparable with, and is properly given the same rating as, canned fruits and vegetables.

It is also shown for the defendants that commodity rates on condensed milk, in both less than carloads and carloads, are published

from Louisville, Ky., to approximately 90 per cent of the destinations in the south and southeast, and that such rates, which in most instances are lower than the fourth and sixth class rates, respectively, are the same as the commodity rates on canned fruits and vegetables. It is contended that these commodity rates, established to meet water competition from the eastern seaboard, generally are lower than the class rates sought. Classification ratings necessarily are general and provide normal rates for the entire territories in which they apply. If special circumstances and conditions surround the movement of a commodity between particular points which do not apply between other points, the conditions are met by the establishment of commodity rates. It follows that commodity rates as a rule are lower than the class rates, but this fact does not establish the unreasonableness of the latter.

Comparisons with other classifications are of little value unless all circumstances and conditions surrounding the movements are shown. Those here offered serve mainly to emphasize the fact that each classification rates condensed milk, in cans, the same as canned fruits and vegetables. In *Hires Condensed Milk Co. v. P. R. R. Co.*, 38 I. C. C., 441, we prescribed rule 26 and fifth-class ratings for less-than-carload and carload shipments of liquid evaporated and condensed milk, in cans, boxed, in lieu of third and fourth class, basing our findings largely upon a comparison of the values, cubical weights and kinds and dimensions of outer containers of liquid evaporated and condensed milk and other canned goods, including fruits and vegetables, sirups, meats, and fish.

We find that the ratings assailed are not shown to be unreasonable and an order dismissing the complaint will be entered.

51 I. C. C.

No. 9884.¹
EASTERN CAR COMPANY, LIMITED,
v.
CANADIAN GOVERNMENT RAILWAYS ET AL.

Submitted November 1, 1918. Decided December 4, 1918.

Charges legally applicable, under joint rates to Montreal, Canada, on carload shipments of yellow-pine lumber from various Georgia, Florida, and Alabama points to New Glasgow and Trenton, Nova Scotia, not found unreasonable with respect to transportation within Commission's jurisdiction. Defendants directed to refund any outstanding overcharges for such transportation. Complaints dismissed.

M. Riely for Germain Company.

W. J. Herman for Eastern Car Company, Limited.

Frank W. Gwathmey for Atlantic Coast Line Railroad Company, Georgia Southern & Florida Railway Company, and others; *V. C. Williams* for Pennsylvania Railroad Company; and *J. K. Smith* for Canadian Government Railways.

R. Walton Moore for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HARLAN, AND HALL.

By DIVISION 3:

These cases are related and were consolidated for hearing and disposition. The Eastern Car Company, Limited, complainant in No. 9884, is a corporation engaged in building railroad cars at New Glasgow, Nova Scotia. The Germain Company, complainant in No. 9901, is a corporation engaged in the lumber business at Pittsburgh, Pa. By complaints seasonably filed they allege that the charges collected by the defendants for the transportation of 75 carloads of yellow-pine lumber from various Georgia, Florida, and Alabama points to New Glasgow and Trenton, Nova Scotia, between February 11 and July 28, 1916, inclusive, were unreasonable. Reparation and the establishment of reasonable rates are asked. By supplemental complaint filed after the hearing with our permission, the Director General of Railroads was made a party defendant in No. 9901. No further hearing was asked or had. Rates are stated in cents per 100 pounds.

¹ This report also includes No. 9901, Germain Company v. Atlantic Coast Line Railroad Company et al.

New Glasgow and Trenton are on the Canadian Government Railways, about 817 and 819 miles, respectively, east of Montreal, Canada. The shipments moved by way of the Virginia cities gateways and junctions with the Canadian lines east of the Detroit-St. Clair frontier, principally Rouses Point, N. Y. The rates applicable were combinations of the joint rates to Montreal and a local rate, said to be 19 cents, but not on file with this Commission, beyond. Effective July 31, 1916, after the shipments moved, joint rates to New Glasgow 10 cents higher than those to Montreal were established over the routes of movement from all the points of origin except those on the Seaboard Air Line Railway. On June 1, 1918, these rates were increased 1 cent per 100 pounds, following our supplemental order in *The Fifteen Per Cent Case*, and on June 25, 1918, they were further increased under General Order No. 28 issued by the Director General of Railroads.

It is alleged, but not shown of record or confirmed by examination of our tariff files, that a tariff of the Canadian Government Railways authorized the application of the same rates to Trenton as to New Glasgow. The shipments in No. 9884 were consigned to New Glasgow and those in No. 9901 to Trenton. Apparently many of the shipments were overcharged and certain shipments in No. 9884 undercharged. In both cases we are asked to award reparation and to prescribe joint through rates on the basis of rates 10 cents higher than those contemporaneously applicable to Montreal, which basis has applied for many years on shipments from Ohio River crossings and from points on the Louisville & Nashville and the Mobile & Ohio railroads and other lines in the states of Florida, Alabama, Louisiana, and Mississippi when routed through the Ohio River crossings and the Detroit-St. Clair frontier. The joint rates through the Virginia cities gateways were established at the instance of the Atlantic Coast Line Railroad without the consent of the Canadian Government Railways, although the latter are parties to the tariff.

In support of the allegation of unreasonableness the complainants offered as representative a comparison of the combination rate of 59 cents from Waycross, Ga., to New Glasgow, 2,181 miles, based on 40 cents to Montreal and 19 cents beyond, with a joint rate of 44 cents contemporaneously applicable from Marianna, Fla., and Gentilly, La., Louisville & Nashville stations, an average distance of 2,516 miles. In explanation of the maintenance by the Louisville & Nashville and other roads of rates from points on their lines to interior Canadian points through the Ohio River crossings and Detroit which are lower than those applicable through the Virginia cities gateways, it is stated that these lines meet defendants' water competitive rates to the north Atlantic ports and apply them as maxima at intermediate

points. Thus the rates in effect at the time of the hearing from points on the Louisville & Nashville to Montreal through the Ohio River crossings were the same as those to Boston, Mass., whereas defendants' rates to Montreal based on the Virginia cities and were 5 cents higher than their rate to Boston. On traffic moving through the Detroit-St. Clair frontier the Canadian lines obtain a long haul and, at the time of movement, provided for a basing arbitrary of 10 cents over Montreal in constructing through rates to New Glasgow, but they are unwilling to participate in rates made on that basis where the routing is by way of their eastern junctions. At the time of the hearing the basis for constructing through rates from or via central freight association and trunk line territories is said to have been 14 cents over Montreal.

The Canadian Government Railways question our jurisdiction to prescribe joint rates or to award reparation, citing *International Paper Co. v. D. & H. Co.*, 33 I. C. C., 270. It is well settled by that and other cases that our jurisdiction over transportation to an adjacent foreign country extends only to the haul within the United States. We can not prescribe or require the maintenance of joint through rates to New Glasgow or Trenton, and it is not shown that the charges accruing to the United States carriers under the joint rates legally applicable to Montreal for that portion of the transportation within the United States were unreasonable. The lines within the United States which participated in the transportation are under legal obligation to protect the joint rates published by them to Montreal, and the overcharges, if any, for which those carriers are responsible should be promptly refunded, with interest at the rate of 6 per cent per annum from the date the charges were paid. The Canadian Government Railways express willingness to adjust their charges to the basis of the combination rates in effect at the time of movement. An order dismissing the complaints will be entered.

No. 9957.

SUNDERLAND BROTHERS COMPANY

v.

CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL.

PORTIONS OF FOURTH SECTION APPLICATION No. 1862.

Submitted February 21, 1918. Decided December 4, 1918.

- 1. Rates on building brick, in carloads, from Boone, Iowa, to Loup City, Clarks, and Grand Island, Nebr., found to have been unreasonable. Certain shipments found to have been overcharged. Reparation awarded.
- 2. Fourth section relief denied.

H. S. Colvin for complainant.
W. H. Jones for Chicago & North Western Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HARLAN, AND HALL.

BY DIVISION 3:

The complainant herein, a corporation engaged in buying and selling building material at Omaha, Nebr., seeks reparation on nine carloads of building brick shipped between November 30, 1915, and May 10, 1917, inclusive, from Boone, Iowa, to Loup City, Clarks, and Grand Island, Nebr., alleging that the charges collected were unreasonable, unjustly discriminatory, and in violation of section 4 of the act in that the rate to Loup City exceeded the aggregate of the intermediate rates and that the rates to Clarks and Grand Island exceeded the rate from Monmouth, Ill., a more distant point. Rates are stated in cents per 100 pounds.

The following statement shows the details of the shipments moved over the Chicago & North Western Railway, hereinafter called the North Western, to Council Bluffs, Iowa, and beyond over the Union Pacific Railroad:

Destination.	Date of ship- ment.	Rates charged. ¹	Rates ap- plicable.	Aggregate of inter- mediates.
		Cents.	Cents.	Cents.
Loup City.....	Nov. 30, 1915	18	¹ 14.7	.....
Do.....	Dec. 2, 1915	18	² 14.7	.....
Do.....	Mar. 3, 1916	18	³ 16.5	⁴ 14.7
Grand Island.....	Oct. 23, 1916	15	.....	⁵ 13.2
Do.....	Oct. 25, 1916	15	⁴ 14.1	.....
Do.....	Mar. 12, 1917	14.1	.....	.....
Clarks.....	Apr. 21, 1917	13.1	.....	.....
Do.....	May 1, 1917	13.1	.....	.....
Do.....	May 10, 1917	13.1	.....	.....

¹ Joint class E distance rates, governed by the western classification.
² Combination rate based on Council Bluffs, composed of a distance commodity rate of 5.7 cents to Council Bluffs and a class E rate of 9 cents beyond
³ Commodity rate.
⁴ Class E rate.
⁵ Based on Council Bluffs.
⁶ Composed of a distance commodity rate of 5.7 cents to Council Bluffs and a class E rate of 7.5 cents beyond.

The tariff publishing the joint distance class rate of 18 cents from Boone to Loup City, in force in 1915, contained a statement that the distance class rates named therein apply only when making lower charges than rates named in other sections of the tariff. The other sections published no rates applicable on brick between the points concerned, hence the rate of 18 cents was inapplicable. The rate legally applicable on the first two shipments was the combination on Council Bluffs of 14.7 cents. Effective February 1, 1916, a commodity rate of 16.5 cents was established and the third shipment was overcharged 1.5 cents.

The joint class E rate legally applicable on the shipment of October 25, 1916, to Grand Island was 14.1 cents. This car was therefore overcharged 0.9 cents.

It is argued for the North Western that the distance class rate from Boone to Loup City was a specific rate and did not violate the fourth section, which prohibits the charging of through rates in excess of the aggregate of the intermediate rates, because the tariff in which the 5.7-cent component to Council Bluffs is published contains a provision that the distance rates named therein may not be used either by themselves or in combination in preference to any specific rates. The tariff naming the distance rate is on file with us and would be applicable if joint through rates were not in force. The through rate was therefore violative of the fourth section, and as it was unprotected by an application for relief, was unlawful. The departure from the same provision of the fourth section in connection with the shipment to Grand Island of October 23, 1916, was likewise unprotected and therefore unlawful.

At the time of movement a rate of 13 cents applied from Monmouth to Clarks and Grand Island. Boone is 232 miles from Monmouth and is intermediate thereto on shipments moving from Monmouth over the Minneapolis and St. Louis Railroad to Marshalltown, Iowa, thence over the North Western through Boone and over the Union Pacific to destination. This departure from the long and short-haul rule of the fourth section was protected by an appropriate fourth section application, which was heard with this case. The 13-cent rate was subsequently established from Boone. The defendants presented no evidence tending to establish the reasonableness of the rates applicable from Boone to Clarks and Grand Island or in support of the fourth section departures, and interposed no objection to the payment of the reparation asked.

Our conclusions with respect to our power to consider at this time applications filed by carriers for relief from the provisions of the fourth section of the act to regulate commerce, are set forth in

our report in *Johnston v. A., T. & S. F. Ry. Co.*, 51 I. C. C., 356, decided November 11, 1918, and need not be repeated here.

The car-mile earnings under the former and subsequently established rates from Boone to Clarks and Grand Island and under the contemporaneous rate from Monmouth follow:

To—	From Boone.			From Monmouth.		
	Distance.	Rate.	Car-mile earnings. ¹	Distance.	Rate.	Car-mile earnings. ¹
	Miles.	Cents.	Cents.	Miles.	Cents.	Cents.
Clarks.....	259	13.1	40.4	491	13	21.1
Do.....		13	40.1			
Grand Island.....	292	14.1	38.6	524	13	19.8
Do.....		13	35.6			

¹ Based on 79,879 pounds, the average weight of the shipments.

We find that the rates charged on the shipments to Loup City were unreasonable and illegal to the extent that they exceeded 14.7 cents per 100 pounds, and on the shipments to Grand Island and and Clarks, to the extent that they exceeded 13 cents per 100 pounds.

We further find that the complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rates herein found legal and reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on the present record, and the complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the date on which the charges were paid and including the overcharges mentioned, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation. The fourth section application will be denied to the extent that it is involved.

As the lines are now under federal control and the Director General of Railroads has not been made a party defendant we can enter no order for the future.

An appropriate fourth section order will be entered.

51 I. C. C.

No. 10067.

ÆTNA EXPLOSIVES COMPANY

v.

SOUTHERN RAILWAY COMPANY ET AL.

Submitted November 7, 1918. Decided December 4, 1918.

Rate on high explosives in carloads from North Birmingham, Ala., to Flintstone, Ga., found to have been and to be unreasonable to the extent indicated. Measure of the maximum reasonable rate prescribed and reparation awarded.

Winthrop & Stimson and *George G. Reynolds* for complainants.
R. Walton Moore for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HARLAN, AND HALL.

BY DIVISION 3:

The complainants are George C. Holt and Benjamin B. Odell, receivers of Ætna Explosives Company, a corporation formerly engaged in the manufacture of explosives at North Birmingham, Ala. By complaint, seasonably filed, they allege that the rate charged by defendants on two carloads of high explosives, shipped December 22, 1915, and February 25, 1916, from North Birmingham to Flintstone, Ga., was unreasonable to the extent that it exceeded the aggregate of the intermediate rates to and from Chattanooga, Tenn. They ask reparation and the establishment of a reasonable rate. Rates are stated in cents per 100 pounds unless otherwise specified.

The shipments, aggregating 43,920 pounds, moved over the Southern Railway and Alabama Great Southern Railroad to Chattanooga, and the Tennessee, Alabama & Georgia Railroad beyond. Charges were collected in the sum of \$382.10 at the joint first-class rate of 87 cents. The intermediate rates contemporaneously in effect on high explosives, in carloads, were the first-class rate of 67 cents from North Birmingham to Chattanooga and \$12 per car of 20,000 pounds, excess in proportion, equivalent to 6 cents per 100 pounds, beyond. This departure from the rule of the fourth section was protected by an appropriate application which was heard in another proceeding now pending. The defendants were not represented at the hearing.

By supplemental complaint filed October 1, 1918, with our permission the Director General was made a party defendant, and the complainant consented to the increase as provided in General Order No. 28 of the rate for the future prayed in its original complaint. The answer thereto of the Director General denies that the complainant is entitled to relief and prays that the original complaint and supplemental complaint be dismissed. No further hearing was asked or had.

In rule 56 of Tariff Circular 18-A we said that if formally called upon to pass upon the case of a through rate exceeding the sum of the intermediate rates between the same points, it would be our policy to consider the through rate as prima facie unreasonable and that the burden of proof would be upon the carriers to defend such higher through rate. Carriers are given authority to reduce through rates, which have been in effect 30 days or longer, between any points which exceed the sum of the intermediate rates by the same or another route on one day's notice. Under Circular 1-A of the United States Railroad Administration authority is given to traffic committees of carriers under federal control and tariff publishing agents to comply with the terms of rule 56 without further authority.

We find that the rate assailed was, and that the present rate is, and for the future will be, unreasonable to the extent that they exceeded or may exceed the aggregate of the intermediate rates contemporaneously in effect to and from Chattanooga; that the *Ætna Explosives Company* made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that complainants *George C. Holt* and *Benjamin B. Odell*, receivers of the *Ætna Explosives Company*, are entitled to reparation in the sum of \$61.48, with interest.

An appropriate order will be entered.

51 I. C. C.

No. 4800.

SLOSS-SHEFFIELD STEEL & IRON COMPANY ET AL.
v.
LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

Submitted December 8, 1915. Decided December 9, 1918.

1. Upon petition for reconsideration of the finding in our former report, 30 I. C. C., 597, that reparation should be denied, *Held*, That complainants and interveners are entitled to a finding as to the reasonableness of the rates during the 2 years immediately preceding the filing of the complaint.
2. Parties allowed 30 days within which to petition for opportunity to present additional evidence. Failing the filing of such petition, the reasonableness of the rates and the questions of reparation will be determined upon the record as it stands.

W. A. Wimbish and *W. H. Ellis* for complainants.

W. A. Northcutt for Louisville & Nashville Railroad Company; *R. Walton Moore* for southern carriers; and *O. E. Butterfield* for all northern lines.

R. Walton Moore for Director General of Railroads.

FOURTH SUPPLEMENTAL REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

By complaint, filed April 16, 1912, the rates on pig iron from blast furnaces in Alabama and Tennessee, located principally at Birmingham, Ala., and Chattanooga, Tenn., hereinafter referred to as the southern furnaces, to Ohio River crossings and to points north and east thereof all rail, and to New England all rail and rail and water, were alleged to be unreasonable and unjustly discriminatory. The establishment of reasonable and nondiscriminatory rates for the future was prayed; also an award of reparation on shipments within the two-year statutory period to the extent of the difference between the charges paid and the charges that would have accrued at such reasonable rates as might be established. The presentation of evidence was concluded on November 30, 1912, and the case was argued and submitted on February 8, 1913. On June 1, 1914, we made our report, 30 I. C. C., 597, in which we said:

A careful review of the entire situation convinces us that the rates now exacted are unreasonable.

Reasonable maximum rates uniformly 35 cents per long ton lower than the former rates were fixed from the Birmingham district to
51 I. C. C.

certain representative Ohio River crossings and to points in central freight association territory as typical. We further held that the existing differentials between the southern furnaces should be maintained as should also the relation of rates obtaining to the Ohio River, to points in central freight association territory, and to the east. As to the prayer for reparation, we refrained from making a specific finding with respect of the reasonableness of the rates in the past, and said:

Reparation is prayed for, but under the circumstances of this case we do not believe that it may fairly be awarded.

The effective date of our order in this proceeding was August 15, 1914, subsequently extended to October 1, 1914. Pursuant to this order the defendant carriers filed tariffs making certain adjustments of their rates on pig iron. On October 12, 1914, southern carriers filed petition for fixing of divisions. On November 3, 1914, complainants filed their supplemental complaint alleging that our order had not been fully complied with in that reductions were made only to destinations on the lines of the carriers specifically named as defendants in the original complaint. By order of that date all carriers concurring in the joint through rates as shown in the tariffs were made parties defendant, and the case was reopened for further hearing and to fix divisions of the rates as between the carriers.

A further supplemental complaint was filed May 4, 1915, seeking reparation on shipments to the additional destinations brought into consideration by the order of November 3, 1914. We disposed of these and other matters in our supplemental report of July 22, 1915, 35 I. C. C., 460, extending the reductions made in the original report to all points reached by the concurring carriers made parties under the supplemental complaints; and reparation was awarded to complainants and interveners on shipments made after October 1, 1914, the effective date, as extended, of the original order, "to points in central freight association territory to which the rates were not reduced on that date, and who bore the transportation charges thereon."

Subsequently, a second supplemental report, 40 I. C. C., 738, was issued to remove certain confusion which existed and to facilitate the disposition of the reparation features.

Rates to trunk line and the New England territories brought before us in the rehearing were disposed of in our third supplemental report, decided July 19, 1917, 46 I. C. C., 558, and are not considered in the present report.

On July 22, 1915, complainants filed another supplemental complaint praying that we reconsider our decision that reparation be denied, as found in our report on the original complaint, and asking

that reparation be awarded on all shipments delivered within the two-year period preceding the filing of the original complaint, and on all subsequent shipments. Argument was had thereon and the present report is solely in reconsideration of the denial of reparation in the original report.

By amendment to the complaint and by supplemental complaint the Director General of Railroads was, on October 7, 1918, made a party defendant. His answer denies that the complainants are entitled to the relief sought. The supplemental complaint disclaims desire for, and the Director General does not request, further hearing.

Complainants contend, in substance, that—

Taking the opinion of the Commission as a whole, and in view of the record presented to it, it has in effect found that the rates were unreasonable for the two years prior to the filing of the petition; and if unreasonable, those rates were unlawful. Complainants have been compelled to pay unlawful rates. Under such circumstances, as a matter of law, they are entitled to reparation. The measure of that reparation is also fixed. But even if this were not true, it would still be the duty of the Commission to hear evidence as to the extent of the damage, and after proof of damage there is no power in the Commission to deprive the complainants of their award.

Defendants call attention to that lack of clear dividing planes between the reasonable and the unreasonable in rates which led the Supreme Court in *Atlantic Coast Line v. N. Car. Corp. Com'n.*, 206 U. S., 1, to speak of "the flexible limit of judgment which belongs to the power to fix rates." They contend that we may properly hold, upon a complaint asking for reparation on past shipments as well as for reduction of rate for the future, that the rate reduction is a proper and full measure of relief, both as to the past and as to the future; and that we can not safely and fairly undertake to penalize carriers respecting transactions in which they have engaged where the imperfect judgment of men works within a limit that is necessarily flexible. Defendants further urge that, while we exercise our judgment within flexible limits in arriving at a conclusion on the issue of reasonableness, there should be a nearer approach to mathematical certainty concerning an award of money damage under which carriers would be required to surrender revenues derived from the application of legally published rates, fixed voluntarily by their officials acting within reasonable limits.

The carriers contend that to award reparation as a matter of course in cases such as that here presented would impair the surpluses, if any, which they have provided for purposes affecting a large public interest, and that no business could be conducted under conditions where past revenues are subjected, without previous notice, to drafts such as would be entailed in an award of reparation here.

The contention of complainants is in substance that if upon the record we have found the existing rates to be unreasonable by a given amount and have prescribed a reasonable maximum rate to take the place of that condemned, it becomes our imperative duty, unmodulated by exercise of judgment or discretion, to enter an order for reparation, measured in amount by the difference between the two rates, on all shipments which moved within the period of the statute of limitations and are covered by the complaint, unless it be found by us that the facts, circumstances, and conditions pertaining to the transportation were different, for some part or all of the statutory period, in such manner as to justify higher rates than those prescribed by us for the future; and that any other course is arbitrary. Complainants also insist that they are entitled to reparation at least from the date upon which they filed their complaint, because since that date the carriers have been upon full notice of the attack made upon the rates.

The Supreme Court of the United States has held that the act of prescribing a rate for the future is legislative, while the act of awarding a sum of money in reparation of damages sustained because of a violation of the law is judicial in its nature. While the Congress in the exercise of its power could, without investigation or hearing, and subject only to the constitutional provision against confiscation, prescribe either the absolute or maximum rate to be charged for the future, it could not perform the judicial function of entering a judgment in reparation of damages either with or without a hearing; neither has it conferred, nor could it confer, power upon this Commission to make an order awarding damages otherwise than pursuant to its findings and conclusions upon investigation and full hearing. Congress in the exercise of its plenary power has charged us with the duty and conferred upon us the authority, circumscribed by the limitations of the statutes enacted by it, to administratively give effect to and enforce the rules and standards of law prescribed by it in these statutes. Strictly speaking, the fixing of a rate for the future, whether absolute or maximum, is not legislation, but is the completion of the legislative purpose by applying the rule of action which Congress has prescribed to the facts in each particular case as ascertained by investigation and hearing.

Whatever may be the limitations upon the exercise of a sound discretion or a reasonable flexibility of judgment in prescribing a rate as the maximum to be charged for the future, we hold in this case, as we have frequently held in the past, that "the Commission is not justified in awarding damages in any case except on a basis as certain and definite in law and in fact as is essential to the support of a final judgment or decree requiring the payment of a definite sum of

money by one party to another." Anadarko Cotton Oil Co. v. A., T. & S. F. Ry. Co., 20 I. C. C., 43, 49.

We also said in that case:

It would be a manifestly harsh rule that would assume a rate now condemned as unreasonable to have been so for a period of two years, or that of the statute of limitations, in the past as a basis for the payment of money by the carriers on past shipments, especially when no complaint had been made against them within that period. Certain it is that the law establishes no such presumption, nor is it a necessary sequence that the rate has been unreasonable for any period in the past. Neither does it seem that the bona fide action of the carriers in the necessary exercise of their judgment within reasonable limits should always be at their peril of liability for reparation for the difference between rates initiated upon their judgment and later changed upon the judgment of the Commission. Therefore the awarding of reparation by no means necessarily follows the reduction of a rate, whether by the voluntary action of the carriers or by order of the Commission.

While the fixing of a maximum rate for the future manifestly must be at a definite, precise figure, it must be conceded that the reasonableness of the exact figure decided upon in any case is not susceptible of absolute demonstration. That figure is the concrete expression of our best judgment, exercised upon the information presented by the record as to all facts, circumstances, and conditions to be considered. The definite standard of reasonableness of the past rate as a basis for reparation is not susceptible of ascertainment in any other way. There is, however, a fundamental difference in the considerations which may properly govern our action in the one case as compared with the other. In fixing the rate for the future we must look to the purposes of the law in preventing the wrongs against which it is aimed, and upon the ascertained facts we must apply our judgment as to what will be the reasonable rate, regulation, or practice and make such order as will best carry out those purposes. In doing this it is not essential that we shall have found that actual and definite damages had resulted to persons in the past. But before we are authorized to award reparation for alleged damages from past transactions it is necessary to find and fix what would have been a reasonable rate, regulation, or practice at the time of the transactions which are the objects of the claim for reparation, and in addition thereto not only to find that the rate, regulation, or practice was unlawful, but, if it be the amount of the rate that is involved, that such rate was unreasonable and resulted in actual damage to the complainant, and also to ascertain the amount of such damage with that degree of certainty indicated in the case above cited.

We have not assumed to shorten the period of the statute of limitations by holding that we will never award reparation for any part of the statutory period prior to the date of filing the complaint, nor

have we attempted to lay down any rule that, on account of alleged laches of a complainant in not protesting against the rates from time to time before the complaint was filed, we will not award reparation for ascertained damages merely because protest was not made. With respect to past occurrences our endeavor has been to determine what, upon all of the facts, circumstances, and conditions, is reasonable and just, as we must do when fixing rates for the future. And in pursuing this course we have in some cases awarded reparation for all shipments covered by the complaint and properly proven within the entire period of the statute of limitations; in other cases we have reached the conclusion that under all the circumstances it would be unjust to do so and have limited the reparation to shipments made subsequent to the filing of the complaint, or, as in this case, to certain shipments made subsequent to the effective date of our original order; and in still other cases we have denied reparation altogether, while at the same time fixing what we deemed to be just and reasonable maximum rates, regulations, or practices to be maintained and observed for the future different from those which had prevailed in the past and were the subject of complaint.

Out of the great volume of business transactions there arise many cases in which the facts, circumstances, and conditions appearing upon investigation and hearing are so thoroughly convincing of the unreasonableness of the rates which had prevailed prior to the filing of the complaint that the judgment and conscience rest entirely satisfied that reparation should be made. In not a few cases the carriers admit that such has been the case. For illustration, in some cases rates long in effect have been increased and, when challenged by complaint, justification for the increase wholly fails upon the hearing. In such a case the degree of conviction that injury has been inflicted and damage suffered demands an order for reparation. Suppose also, as sometimes happens, that a commodity rate lower than the class rate has been established from certain points in a territory at which a particular commodity is manufactured, and there springs up a business of the same kind at another point in the same territory from which the commodity has not theretofore been shipped and from which the class rate applies, there again is presented a reasonably clear basis, as between the competing points, for an award of reparation on shipments paying the class basis before a proper adjustment is brought about. These are only illustrations of various situations which in our judgment have justified us in awarding reparation in some cases and not in others, and in awarding it for the full period of the statute of limitations in some cases and for different periods in others. Where the question of what is the reasonable rate for the

future, or what would have been the reasonable rate for the past, is a close one on the record, and since in either case the exact figure of reasonableness is not demonstrable and must rest upon judgment and conscience enlightened by all the facts, circumstances, and conditions, we may in many cases be reasonably well satisfied as to what we should do for the future, while hesitating to apply to past transactions as a basis for reparation the rate fixed for the future, on account of the closeness of the question and the impossibility of demonstration as to what is exactly right, in the face of a reasonable presumption of good faith on the part of the carrier in fixing the rates which have prevailed in the past, especially when they have been in effect for a substantial time without active protest. The carriers are required by law to initiate and establish their rates, and they must of necessity, acting within human limitations, exercise their judgment in the first instance, just as we do upon complaint and investigation in the second instance. The law does not presume bad faith on the part of the carriers in this initial exercise of their judgment, and the rates they establish are binding as the lawful rates until overturned or modified after they have been ascertained upon full hearing and investigation to be unreasonable.

The carriers have urged in this case, as frequently in other cases involving claims for reparation, that notwithstanding the fact that a rate which has been in effect for a long period of time is condemned by the Commission and a lower one substituted for it as the reasonable maximum rate for the future, reparation should not be awarded for any period where it can be shown that although the consignor or consignee of the property paid and bore the freight charges, as such, the rate then in effect was nevertheless taken into account in fixing either the purchase price or the selling price of the goods; it being contended that in such cases the damage, if any, has in whole or in part been passed along to the consumer. We have rejected this contention in all cases, and have undertaken to deal with the matter only as between the parties to the transportation, holding that it is not for us to inquire into the various considerations moving the parties to the purchase and sale of the property, either before or after the transportation, in fixing the prices upon which they agreed. Our views on this question have been definitely stated in several decisions. In *Burgess v. Transcontinental Freight Bureau*, 13 I. C. C., 668, we said:

The complainants claim reparation by reason of shipments made under the 85-cent rate. The defendants deny that the complainants should be awarded such reparation, even though the Commission be of the opinion that that rate is and has been excessive, for the reason that no damage upon the part of the complainants has been established * * *.

The dealer in Wisconsin or at Memphis has charged substantially the same price whether his sales were in the east or for export or for shipment to California, and this means, of course, that the advance in the freight rate has been added to the price paid by the consumer. The defendants say that it follows that the complainants who have paid this freight rate have not actually been injured.

It appeared that one witness suspended operations upon the Pacific coast owing to the advance in the rate, and other witnesses were of the opinion that more lumber would have been sold under the 75-cent rate. It is impossible to say, therefore, to what extent these complainants may have been actually damaged by the advance in this rate, if the word damage is to be interpreted and applied as claimed by the defendants.

Such is not, in our opinion, the proper meaning of this term. These complainants were shippers of hardwood lumber to this destination and they were entitled to a reasonable rate from the defendants for the service of transportation. An unreasonable rate was in fact exacted. They were thereby deprived of a legal right and the measure of their damage is the difference between the rate to which they were entitled and the rate which they were compelled to pay. If complainants were obliged to follow every transaction to its ultimate result and to trace out the exact commercial effect of the freight rate paid, it would never be possible to show damages with sufficient accuracy to justify giving them. Certainly these defendants are not entitled to this money which they have taken from the complainants, and they ought not to be heard to say that they should not be required to refund this amount because the complainants themselves may have obtained some portion of this sum from the consumer of the commodity transported.

In *Nicola, Stone & Myers Co. v. L. & N. R. R. Co.*, 14 I. C. C., 199, we said:

A purchaser might buy three carloads of lumber at a shipping point in Georgia, all of the same grade and value. The price is agreed upon, being fixed by all considerations that affect it, including the freight charges, which must of necessity be paid by the purchaser if he ships the lumber. One of the three cars is shipped to an Ohio River point; another is shipped to Pittsburgh or some eastern point; while the third is resold at the mill where it was first purchased. The vendor has received the same price for each of these carloads. There can be no question of refund in respect to the one which was not shipped, but sold on the spot; nor could there be any question as to refund under the proceedings herein referred to on the one that was shipped to the east, because those rates were not involved; but there is a refund of 2 cents per 100 pounds due on the one shipped to the Ohio River point. If the manufacturer is entitled to a refund on this last-named shipment, not because he paid the freight as the owner and shipper of it, but because of the indirect effect of the excessive established freight rate in existence when he sold the lumber which unfavorably affected the price thereof, why would he not be equally entitled to a like measure of reparation on the other two cars and upon all of his lumber? If we should adopt the contention of the carriers that because the producer of the lumber and the shipper or dealer has been able to enhance the price thereof by the amount of the added freight charges, and it were shown to be true that no injury has therefore resulted to either of them but has fallen on the consumer, we would again be led into another field of inquiry impossible of definite and satisfactory results and this could only be regarded as undertaking to deal with indefinite and remote consequences.

The *Burgess Case* and the *Nicola, Stone & Myers Co. Case* were approved by the circuit court of appeals for the sixth circuit in *Darnell-Taenzer Lumber Co. v. Southern Pac. Co.*, 221 Fed., 890, recently affirmed by the Supreme Court in *Southern Pac. Co. v. Darnell-Taenzer Lumber Co.*, 245 U. S. 531, decided January 21, 1918. The doctrine of the *Nicola, Stone & Myers Co. Case* had previously been approved by the circuit court of appeals for the fifth circuit in *Davis v. M. & O. R. R. Co.*, 194 Fed., 374.

As stated above, we have not assumed to shorten the period of limitations prescribed by the statute. We have considered it proper to regard it as a limitation, that is to say, we are precluded from awarding reparation on shipments moving more than two years before a complaint for the recovery of damages is filed, but we are not required to award reparation on all shipments covered by the complaint which moved within the two-year period.

Many circumstances must be considered in determining whether or not reparation should be awarded, and, if so, in what amount. Prior to the amendment of June 29, 1906, there was no uniform limitation applicable to claims for damages arising from violations of the act to regulate commerce. By that amendment the Congress undertook to remove such claims from the operation of the varying state laws and subject them to limitations of its own creation, operating alike in all the states. *Meeker & Co. v. Lehigh Valley R. R.*, 236 U. S., 412. By that amendment, too, the Commission was for the first time given power to prescribe a reasonable maximum rate for the future. A provision of almost equal importance was added by the amendment of June 18, 1910, whereby the Commission was empowered, pending hearing and decision thereon, to suspend the operation of any schedule stating new rates, fares, charges, regulations, or practices. It will be seen from this that since the amendment of 1906 any person has the right to attack any rate already in effect and, upon a proper showing, secure its reduction; and that since the amendment of 1910 any person can, upon making a sufficient showing of unreasonableness or unlawful discrimination, secure the suspension of any proposed rate.

We hold that the domain for the legal exercise of a sound discretion and reasonable flexibility of judgment has not been closed against us so that we are forbidden to shape our action in such manner as will, in view of all the circumstances of the case, best promote the ends of justice, taking into account the public as well as the private interests involved.

In *Arlington Heights Fruit Exchange v. S. P. Co.*, 45 I. C. C., 248, we said, at page 250:

To enable us to prescribe reasonable rates the Congress has delegated to us a quasi legislative or administrative power in the exercise of which there

51 I. C. C.

inheres necessarily and admittedly a wide but sound discretion aptly termed the "flexible limit of judgment which belongs to the power to fix rates." *Atlantic Coast Line v. N. Car. Corp. Com'n.*, 206 U. S., 1, 26. We are of the opinion that this "flexible limit of judgment" obtains equally whether the rate to be fixed is to apply as of the past, for the present, or for the future. The discretion is just as wide and as broad in respect of a past as of a future rate, but in exercising the function the end to be attained in its exercise must be kept in mind. For the future we are endeavoring to prevent a public wrong; as to the past we have to look only to the remedying of a private injury by awarding damages. *Baer Bros. v. Denver & R. G.*, 233 U. S., 479. The only effect of finding a rate attacked unreasonable or otherwise unlawful as of the past is to afford a basis upon which to predicate an award of damages. Moreover, section 16 of the act provides "that if * * * the Commission shall determine that any party complainant is entitled to an award of damages," etc., we shall make an order directing the carrier to pay the complainant the sum to which he is entitled. In this case we were of the opinion that complainants had not been damaged, and we were therefore not impressed with the necessity of a finding that the charge assessed in the past was unreasonable. It was not an exercise of an arbitrary discretion to award or not award reparation.

In case of complaint, investigation, and full hearing, and a finding of unreasonableness of the rates involved as of the date of the decision by the Commission, does the law require that we award reparation and that we always measure the same by the difference between the rate found unreasonable and that prescribed by us as the reasonable maximum for the future? If such is the requirement of the law, does it apply to all shipments properly presented that had been made during the entire period covered by the complaint and not barred by the statute of limitations, when it appears that the facts, circumstances, and conditions affecting the transportation have been substantially the same throughout such period? If these are the requirements it would seem clearly to be our duty on the facts of record in this case to award reparation on all of the shipments covered by the original complaint and made within two years prior to the filing of the same.

In this proceeding the rates existing at the time the complaint was filed were alleged to be unreasonable, and it was also alleged and has been strongly urged throughout the several proceedings that the rates were likewise unreasonable during the period of two years prior to the filing of the complaint. We think that under all the circumstances of this case complainants are entitled to a finding as to the reasonableness of the rates during the two years prior to the filing of the complaint. As to this question the burden of proof rests upon complainants in the same manner and to the same extent as with regard to the rates existing at the time the complaint was filed. It will not do to say that if existing rates are found to be unreasonable for the future the burden is on the carriers to show that during the two years prior

to the filing of the complaint different conditions existed which warranted the rates obtaining during the period. If the rates are shown to have been unreasonable *per se*, an award of reparation in the difference between the unreasonable rates paid and the reasonable rates found by us would naturally follow on behalf of those who prove that they paid and bore the unreasonable rates and were damaged thereby. We think it appropriate in this discussion to call attention to the difference in the proof required to sustain an award of reparation under a finding of undue preference or prejudice and a finding that a rate is unreasonable *per se*.

While this proceeding has been protracted, the principles involved are most important and the amount of reparation claimed is substantial. We think that either party should be entitled to supplement the record with specific proof as to the reasonableness or unreasonableness of the rates during the period of two years immediately prior to the filing of the complaint, if it so desires. Upon application of either party we will reopen the case for the purpose of receiving such evidence. If such request is not received within 30 days from the date of the service of this report, we shall proceed upon the present record to determine whether or not the rates were unreasonable for the period in question, and, if so, the extent of unreasonableness, and dispose of the claim for reparation in accordance with the conclusions reached on this point.

McCHORD, *Commissioner*, dissenting:

I am forced to dissent from the conclusion of the majority in this case because I am convinced that it is not tenable as a matter of law, and that it is not consistent with the facts. The history of the case is as stated in the report, but I desire to call attention to and emphasize the only question presented for determination. It is well stated by the majority to be "in reconsideration of the denial of reparation in the original report," 30 I. C. C., 597. The contention of the complainants is that the record presented upon the original complaint shows that the conditions surrounding the transportation of pig iron in carloads from the southern producing points over the lines of the defendants were not materially different for a period of two years prior to the filing of the complaint from those existing at the time of the filing and the date of the Commission's report; that the reasons given in the report for requiring the establishment of the rates prescribed existed for a period of two years prior to the filing of the complaint; that they are entitled to a finding as prayed for in the original complaint that the rates were unreasonable for two years prior to the filing of the complaint; and that they were dam-

aged to the extent of the difference between the rates paid and the rates fixed by the Commission as reasonable.

The defendants did not, and do not, deny the contentions of the complainants as to the facts. No question is raised by the defendants as to the propriety of a finding that the rates complained of were unreasonable, or that the rates prescribed by the Commission were not reasonable.

As I understand the majority report, it concedes that the complainants are entitled to a finding as to whether the rates were unreasonable prior to October 1, 1914, but that even if such finding were made it does not necessarily follow that reparation would be awarded during that period. In the first place, the facts in this record are sufficient to my mind to establish that the rates were unreasonable for that period. I do not understand how the majority can consistently say that certain rates were unreasonable on June 1, 1914, based upon evidence presented to it eighteen months before, and dealing, for the most part, with conditions as they existed one and a half to four years prior to the time the decision was rendered without deciding that the rates prior to that date were also unreasonable. There seems to be no escape from the conclusion that if the evidence which the Commission had before it for consideration, and upon which it predicated its findings and conclusions, was sufficient to justify a finding that the rates attacked were unreasonable as of June 1, 1914, they must *a fortiori* have been unreasonable during the entire period from two years prior to the filing of the complaint to the time when the prescribed rates became effective. The principal changes in circumstances and conditions affecting the transportation of this commodity are (a) an increasing consumption in the south of the products of the southern mills which affected the volume of movement to points north of the Ohio and Potomac rivers somewhat, and (b) a steadily mounting increase in operating expenses as compared with operating revenues. In other words, the conditions were more favorable to the complainants prior to October 1, 1914, than they were after that date.

I do not see that there is any reason at all why the majority should state that upon application the proceeding will be reopened for the submission of further evidence with respect to the rates attacked. In the event that such applications are filed what additional evidence could the parties submit? The pleadings in this case brought in issue the lawfulness of the rates in effect prior to the date the complaint was filed, and all parties had opportunity to submit, and did submit, such evidence as they thought necessary. The complainants introduced evidence with respect to the history of the rates

attacked, comparisons with rates from other originating districts, transportation costs, etc., both with respect to the time when the case was heard and prior thereto. The hearing was concluded on November 30, 1912, and there is no showing of record that the circumstances and conditions surrounding the transportation prior to that date were dissimilar in any respect to those existing at the time of the hearing. More than six years after the case was submitted the majority report gives the parties an opportunity to submit additional evidence. As it is, the evidence now in the record stands uncontradicted. There is nothing that any party to this proceeding can show, as I see it, that would enable the Commission to determine any question involved in this proceeding that is not already in the record. The complainants assumed the burden of proof at the hearing, the lower rates for the future asked by them were prescribed by the Commission. To my mind the action taken by the majority in this case is unsound as a matter of procedure and practice and is contrary to the law and the facts.

It is stated by the majority that if the rates are shown to have been unreasonable *per se* an award of reparation in the difference between the unreasonable rates and the reasonable rates found would naturally follow on behalf of those who proved that they have paid and borne the unreasonable rates and were damaged thereby. In other words, that even should it find, after further hearing, that the rates were unreasonable prior to October 1, 1914, the Commission nevertheless might not award reparation on the ground that the complainant had not been damaged. The collection by defendant of unlawful charges is the basis of reparation in this case. The Commission, in cases where the finding is that unreasonable rates have been charged by the carriers, has no lawful authority to find that parties paying such charges have not been damaged. Complainants' contention here is that their right to an award of reparation for the statutory period follows as a matter of law from a finding of unreasonableness of the rates, and that the measure of their damage is the difference between the unreasonable rates paid and those found to be reasonable.

The carriers contend that the Commission has no power to award damages on account of the charging of published rates which are the only "legal" rates when charged, and also that there is no proof in the record that the complainants have been damaged.

By section 1 of the act, every unreasonable charge for interstate transportation is declared to be "unlawful," while section 6 requires the published rates to be strictly observed. The two sections are not repugnant. A carrier is required to charge its published rates, how-

ever unreasonable they may be, but it is not entitled to retain the excess over reasonable rates after the Commission upon proper complaint has found that the published rates were unreasonable, and further finds what the reasonable rates should have been. To the extent of such excess the parties who bore the unreasonable charges are damaged. The fact that the charges were based on the "legal" rates by reason of the fact that they were duly published at the time does not relieve the carrier of the obligation to return to shippers the excess over reasonable charges when that excess has been determined by the Commission. *Texas & Pac. Ry. Co. v. Abilene Cotton Oil Co.*, 204 U. S., 426, 442; *Arkansas Fuel Co. v. C., M. & St. P. Ry. Co.*, 16 I. C. C., 95, 97.

When upon complaint asking for reparation the Commission has found the rates when charged were unreasonable and has further found what would have been reasonable rates, the only question open for determination is whether or not the complainant is the party entitled to recover.

In *Burgess v. Transcontinental Freight Bureau*, 13 I. C. C., 668, 679-80, it is said:

The defendants deny that the complainants should be awarded such reparation, even though the Commission be of the opinion that that rate is and has been excessive, for the reason that no damage upon the part of the complainants has been established. * * * These complainants were shippers of hardwood lumber to this destination and they were entitled to a reasonable rate from the defendants for the service of transportation. An unreasonable rate was in fact exacted. They were thereby deprived of a legal right and the measure of their damage is the difference between the rate to which they were entitled and the rate which they were compelled to pay.

See also *Wallingford v. A., T. & S. F. Ry. Co.*, 30 I. C. C., 19, 21; *Cudahy Packing Co. v. A., T. & S. F. Ry. Co.*, 32 I. C. C., 560, 563; *Du Pont de Nemours Powder Co. v. L. & N. R. R. Co.*, 33 I. C. C., 288, 290; *Ballou & Wright v. N. Y., N. H. & H. R. R. Co.*, 34 I. C. C., 120; *Coal Switching Reparation Cases at Chicago*, 36 I. C. C., 226, 237; and *Oden & Elliott v. S. A. L. Ry.*, 37 I. C. C., 345.

The courts have announced and adhered to the same principle. *Meeker & Co. v. L. V. R. R. Co.*, 236 U. S., 412; and *Mills v. L. V. R. R. Co.*, 238 U. S., 473.

In *Southern Pac. Co. v. Darnell-Taenzer Lumber Co.*, 245 U. S., 531, the Supreme Court said:

The carrier ought not to be allowed to retain his illegal profit, and the only one who can take it from him is the one that alone was in relation with him, and from whom the carrier took the sum. *New York, New Haven & Hartford R. R. Co. v. Ballou & Wright*, 242 Fed., 862. Behind the technical mode of statement is the consideration well emphasized by the Interstate Commerce Commission of the endlessness and futility of the effort to follow every trans-

action to its ultimate result. 18 L. O. C., 680. Probably in the end the public pays the damages in most cases of compensated torts.

The cases like *Pennsylvania R. R. Co. v. International Coal Mining Co.*, 230 U. S., 184, where a party that has paid only the reasonable rate sues upon a discrimination because some other has paid less, are not like the present. There the damage depends upon remoter considerations. But here the plaintiffs have paid cash out of pocket that should not have been required of them, and there is no question as to the amount of the proximate loss. See *Meeker v. L. V. R. R. Co.*, 236 U. S., 412, 429; *Mills v. L. V. R. R. Co.*, 238 U. S., 473.

The law as laid down by the Commission and the courts in the cases referred to, and numerous others that might have been cited were it necessary, is that a shipper is damaged who has been required to pay freight charges based on rates found unreasonable by the Commission, and that the measure of the damage is the difference between the charges paid and those found reasonable. Applying the law to the facts in this case the finding must be that the charges paid by these complainants were based on unreasonable rates for the period of two years prior to the filing of the complaint until October 1, 1914. The complainants were required to pay and did pay freight charges that were unlawful, and therefore should not have been collected by the defendants. Nowhere in the law or under ordinary rules of right and justice can there be found any basis for denying the repayment of such unlawful charges. The refusal to award the reparation claimed here is arbitrary. The defendants have in their possession money which they have no lawful right to retain. The complainants are here asserting their right to it. Upon proof of payment by them of the unlawful charges they are entitled to an order from the Commission requiring the defendants to refund the full amount of the payments so made by them for the prescribed period of limitation. The contention of complainants that they are entitled as a matter of law to the reparation asked by them is sound. No discretion is by law directly or indirectly vested in the Commission to hold, in effect, that the defendants may retain freight charges based on rates found to be unreasonable in any case such as this wherein complainants have in a timely and otherwise lawful manner presented claims for reparation.

WOOLLEY, *Commissioner*, dissenting:

The foregoing report does not finally dispose of the question under consideration, as opportunity is given for further hearing should any party to the case ask it, but I desire at this time to set forth my disagreement with the views stated by the majority as to the considerations which may actuate the Commission in awarding or denying reparation. Those views, in my opinion, are not tenable as a

matter of law and are based upon an incorrect theory as to our functions.

The report sets forth the difference between the act of prescribing a rate for the future, which is legislative, or rather (to quote the language of the report) "the completion of the legislative purpose by applying the rule of action which Congress has prescribed to the facts in each particular case as ascertained by investigation and hearing," and the act of awarding a sum of money in reparation of damages sustained because of a violation of the act, which is judicial in nature; then follows *Anadarko Cotton Oil Co. v. A., T. & S. F. Ry. Co.*, 20 I. C. C., 43, in holding that "the Commission is not justified in awarding damages in any case except upon a basis as certain and definite in law and in fact as is essential to the support of a final judgment or decree requiring the payment of a definite sum of money by one party to another." It states correctly that the exact figure of reasonableness of a rate, whether past, present, or future, "is not demonstrable and must rest upon the judgment and conscience enlightened by all the facts, circumstances, and conditions," but in discussing the fixing of a reasonable rate for the future and the condemning of a rate as unreasonable in the past, as a basis for an award of reparation, it says:

* * * There is, however, a fundamental difference in the considerations which may properly govern our action in the one case as compared with the other. * * * we may in many cases be reasonably well satisfied as to what we should do for the future, while hesitating to apply to past transactions as a basis for reparation the rate fixed for the future, on account of the closeness of the question and the impossibility of demonstration as to what is exactly right, in the face of a reasonable presumption of good faith on the part of the carrier in fixing the rates which have prevailed in the past, especially when they have been in effect for a substantial time without active protest * * *.

Many circumstances must be considered in determining whether or not reparation should be awarded, and, if so, what amount * * *.

We hold that the domain for the legal exercise of a sound discretion and reasonable flexibility of judgment has not been closed against us so that we are forbidden to shape our action in such manner as will, in view of all the circumstances of the case, best promote the ends of justice, taking into account the public as well as the private interests involved * * *.

The suggestion that upon request the case will be reopened for the taking of further testimony bearing upon the reasonableness of the rates during the two-year period immediately prior to the filing of the complaint is to my mind inconsistent with the preceding language of the report; further, following this suggestion it is questioned whether, when reparation is asked and "it appears that the facts, circumstances, and conditions affecting the transportation have been the same throughout such [two-year] period" as on the date as of which the rates were found to have been unreasonable, the require-

ments of the law are that reparation shall be awarded on all shipments moving within that period and the following statement is made:

If these are the requirements it would seem clearly to be our duty on the facts of record in this case to award reparation on all of the shipments covered by the original complaint and made within two years prior to the filing of the same.

I shall proceed to discuss first the general expressions of opinion on the subject of reparation without reference to the suggestion as to further hearing.

To my mind, while the report states that we will not award reparation "except on a basis as certain and definite in law and in fact as is essential to the support of a final judgment or decree requiring the payment of a definite sum of money by one party to another," it in practical effect holds that we are given a very broad discretion to deal with reparation, and that while in no case will we make an award unless we are convinced that the rates were unreasonable or otherwise unlawful, at the same time, in a doubtful case, we may condemn the rates as unreasonable or otherwise unlawful for the future, and yet, although the testimony upon which that finding is based referred wholly or in large part to the past, we may use a wise discretion in determining whether or not an award of reparation "will best promote the ends of justice." The ends of justice will be best promoted by our acting strictly within the scope of the powers conferred upon us by the act to regulate commerce in determining whether rates challenged by complaint in accordance with the provisions of the statute and of our rules of practice were in fact unreasonable or otherwise unlawful, and, if so, whether the party complaining is entitled to the damage asked. That is our duty, and our whole duty, as I see it. The idea that we have a broad discretion in considering reparation questions and may give weight to other facts than whether or not the rates challenged were unreasonable or otherwise unlawful, and whether or not damage has been properly proven, seems to me to be based upon misconceptions as to our "flexible limit of judgment" and as to what in a reparation case is "a basis as certain and definite in law and in fact as is essential to the support of a final judgment or decree requiring the payment of a definite sum of money by one party to another."

The "flexible limit of judgment which belongs to the power to fix rates" enables us to weigh many facts, circumstances, and conditions in determining the reasonableness of rates, but it appears to me inconceivable that any different or less weight should be given evidence when we are passing upon the reasonableness of charges exacted on past shipments, as a basis for awarding or denying repara-

ration, than when we are fixing a future basis of charges. The report indicates that it is thought to be a more serious matter to condemn a rate as having been unreasonable in the past than to condemn the same rate as unreasonable for the future. Surely we should be no less convinced as to the future than as to the past before reaching a conclusion, for the fixing of future rates may affect a large part of or the whole public, whereas our conclusion as to the past determines only whether a limited number of persons have or have not a basis for claims against the carriers.

Coming then to the question of the certainty and definiteness necessary as a basis for an award: The first requisite, of course, is a finding by us that the rate charged was unreasonable or otherwise unlawful. Bearing in mind the opinions I have just expressed, the only further question is one of fact, as to whether or not the party asking the award has actually been damaged and is the party entitled to reparation. That our findings as to this should be definite no one denies, and the law amply protects the rights of carriers against whom an award is made.

In the instant case, considering a complaint filed April 16, 1912, and testimony taken prior to December 1 of that year, upon what theory other than that we may exercise a broad discretion could we deny reparation on *all* shipments moving prior to October 1, 1914, the date fixed for the publication of reduced rates, which is equivalent, in my opinion, to a finding that the rates were unreasonable, not from April 16, 1910, or any date within the two-year period, not from the date the complaint was filed, not from the date of our decision (June 1, 1914), and not even from the date originally fixed for the order to take effect (August 15, 1914), but, as the carriers were unable to publish the reduced rates within the time prescribed, from the date to which our order was postponed, October 1, 1914? For this theory as to our discretion I can find no support in the statute under which we operate.

I can readily see that we might have before us a record which would justify us in finding that from and after a certain date, and not before, a rate complained of was unreasonable and I can see how that date might have been two years prior to the date of filing the complaint or any date within the two-year period, or might have been the date of filing the complaint or even the date of hearing, but I could not agree to find that a rate was not unreasonable during the period covered by the testimony upon which the finding of subsequent unreasonableness is based unless there was a showing of very unusual circumstances and conditions, such as reliable proof at the hearing that from and after a certain date traffic would materially increase or that operating expenses would substantially decrease, or

both. In the instant case it clearly appeared that there has been a steady increase in operating costs. My view is that the taking of further testimony as to the two-year period prior to the filing of the complaint would not be likely to result in the production of further evidence of value. I do not see how we can escape concluding that the rates on pig iron were unreasonable at least from the date on which the complaint was filed and awarding reparation on all shipments moving subsequently.

No. 9377.

CHAMBER OF COMMERCE, HOUSTON, TEX.,

v.

MORGAN'S LOUISIANA & TEXAS RAILROAD & STEAMSHIP COMPANY ET AL.

FOURTH SECTION APPLICATIONS Nos. 488, 628, 642, 792, 793, 794, 2045, 4218, 4219, AND 4220.

Submitted June 5, 1917. Decided December 19, 1918.

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1. Rates on sugar and green coffee, in carloads, from New Orleans and other producing points in Louisiana to Houston, Tex., not shown to have been unreasonable. Alleged undue prejudice has been removed. Present rates not considered as the Director General of Railroads is not a party defendant. Complaint dismissed.
 2. Fourth section relief denied.

Huggins & Kayser, J. A. Morgan, and F. A. Lallier for complainant.

H. S. L'Hommedieu for Orange Board of Trade, and *L. C. Griffin* for Imperial Sugar Company, interveners.

R. C. Fulbright for Gulf Coast lines; *J. F. Garvin* for Missouri, Kansas & Texas Railway Company of Texas and its receiver; *F. R. Dalzell* for Gulf, Colorado & Santa Fe Railway Company; *Gentry Waldo* for Southern Pacific lines; and *L. M. Hogsett* for Texas & Pacific Railway Company and its receiver, and International & Great Northern Railway Company and its receiver.

Fred H. Wood for all defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HARLAN, AND HALL.

BY DIVISION 3:

This complaint attacks the defendants' rates to Houston, Tex., of 17 cents per 100 pounds on sugar in carloads, from New Orleans, La., and other producing points in Louisiana, 16.25 cents per 100 pounds on green coffee, in carloads, from ship side, New Orleans, and 20.5 cents per 100 pounds on green coffee, in carloads, from New Orleans proper, alleging that they are unreasonable, unduly prejudicial to the dealers and jobbers at Houston as compared with the defendants' rates from the same points of origin to Galveston, Tex., viz, 12 cents per 100 pounds on sugar, in carloads, and 15.5 cents per 100 pounds on green coffee, in carloads, the latter rate applying from both ship side, New Orleans, and New Orleans proper, and in violation of the long-and-short-haul rule of the fourth section in that they exceed the rates to Galveston. We are asked to prescribe rates to Houston not in excess of those contemporaneously in effect to Galveston. The Orange Board of Trade, of Orange, Tex., and the Imperial Sugar Company, of Sugarland, Tex., intervened, the former in support of the maintenance of the present equality of rates on sugar to Orange and Houston, and the latter in opposition to a reduction in the rate on sugar to Houston because of the alleged resulting disadvantage to the intervener. Rates are stated in cents per 100 pounds and are those in effect prior to June 25, 1918, on which date they were increased under General Order No. 28 issued by the Director General of Railroads.

Galveston and Houston are connected by the Galveston, Harrisburg & San Antonio and the Gulf, Colorado & Santa Fe railways, Galveston, Houston & Henderson Railroad, Missouri, Kansas & Texas Railway of Texas, and International & Great Northern Railway, the three last-named carriers operating over the same rails. The rates from New Orleans and other points in Louisiana taking New Orleans rates to Houston and Galveston are controlled by the Southern Pacific and the Gulf Coast lines, the route of the former being by way of Morgan's Louisiana & Texas Railroad and Louisiana Western Railroad to the Sabine River, Texas & New Orleans Railroad to Houston, a distance of 362 miles, thence Galveston, Harrisburg & San Antonio Railway to Galveston, and of the latter over the New Orleans, Texas & Mexico Railway to the Sabine River, Beaumont, Sour Lake & Western Railway to Houston, a distance of 368 miles, and thence via connecting lines to Galveston. The short-line distance from Houston to Galveston is 48.6 miles. The stated distances from New Orleans do not include a constructive mileage of

20 miles for Mississippi River transfer, the use of which would not affect the conclusions reached by us. By way of the Southern Pacific or the Gulf Coast lines to Beaumont, the Gulf, Colorado & Santa Fe to Port Bolivar, Tex., thence car ferry, operated by the Gulf, Colorado & Santa Fe, to Galveston, the distances are 357 and 355 miles, respectively, but these routes are little used because of the resultant short-hauling of the Southern Pacific or the Gulf Coast lines. Traffic may also move over the Southern Pacific or the Gulf Coast lines to Beaumont, thence via the Gulf, Colorado & Santa Fe through Somerville, Tex., to Galveston, but these routes are seldom, if ever, used. The Texas & Pacific Railway is the initial carrier in the following circuitous routes:

	Miles.
T. & P., Alexandria, La., St. L. I. M. & S., Oakdale, La., G. C. & S. F., Galveston, G. C. & S. F., Houston-----	496
T. & P., Longview, Tex., I. & G. N., Houston-----	604
T. & P., Shreveport, La., H. & S., H. E. & W. T., Houston-----	547
T. & P., Longview, G. C. & S. F., Galveston, G. C. & S. F., Houston-----	710
T. & P., Dallas, Tex., M. K. & T. of T., Houston-----	835
T. & P., Fort Worth, Tex., T. & B. V., Houston-----	789
T. & P., Fort Worth, G. C. & S. F., Houston-----	869

The Missouri, Kansas & Texas Railway Company of Texas is the delivering carrier at Houston by a number of circuitous routes, the distances ranging from 835 to 1,075 miles. The rates over most of the routes named were as above stated when the complaint was filed.

For the defendants it was conceded that there is no justification for maintaining higher rates to Houston than to Galveston, and effective May 14 and September 1, 1917, they increased the Galveston rates to the Houston basis, thereby removing the alleged discriminations.

The record shows that the rates to Galveston, in effect at the time the complaint was filed, were originally made to meet actual water competition. The complainant contends that the removal of the discrimination by increasing the rates to Galveston is in contravention of the following provision in section 4 of the act:

Whenever a carrier by railroad shall in competition with a water route or routes reduce the rates on the carriage of any species of freight to or from competitive points, it shall not be permitted to increase such rates unless after hearing by the Interstate Commerce Commission it shall be found that such proposed increase rests upon changed conditions other than the elimination of water competition.

But that provision was not contravened in this instance, as the reduced rates to Galveston were established prior to its enactment. *Westbound Lake-and-Rail Knit Goods Commodity Rates*, 32 I. C. C., 54; *Transcontinental Commodity Rates*, 32 I. C. C., 449.

The complainant submitted no substantial evidence to show that the rates assailed are intrinsically unreasonable. Comparison is made with the rates on sugar from New Orleans to St. Louis, McBride, Caruthersville, Mo., Helena, Ark., Memphis, Nashville, Tenn., Louisville, Ky., and Evansville, Ind., which, distance alone considered, are, in general, somewhat lower than the rates assailed, but the record discloses that the circumstances and conditions surrounding most, if not all, of these rates are substantially different from those existing in connection with the rates on sugar to Houston. The ton-mile earnings under the rates assailed are, for the short-line distance of 362 miles, 9.4 mills on sugar, 9.0 mills on green coffee, ex ship side, and 11.3 mills on green coffee from New Orleans proper. In *Drewes Sugar Co. v. S. P. Co.*, 44 I. C. C., 533, we found a rate of 25 cents on raw sugar from New Orleans to Sugarland, a point 27 miles west of Houston, not unreasonable. The ton-mile earnings thereunder for the short-line distance of 389 miles are 12.9 mills.

We find that the rates assailed are not shown to have been unreasonable. The carriers concerned are now under federal control and an opportunity was afforded to amend the complaint by making the Director General of Railroads a party defendant. As no amendment was filed the present rates can not be considered on this record, and the complaint will be dismissed.

There were heard with this complaint portions of Fourth Section Applications No. 488, of Morgan's Louisiana & Texas Railroad & Steamship Company; Nos. 628 and 642, of F. A. Leland, agent; No. 792, of the New Orleans, Texas & Mexico Railway Company; No. 793, of the Beaumont, Sour Lake & Western Railway Company; No. 794, of the Orange & Northwestern Railroad Company; No. 2045, of the Illinois Central Railroad Company; and Nos. 4218, 4219, and 4220, of the St. Louis, Iron Mountain & Southern Railway Company, by which authority is sought to continue to charge for the transportation of sugar, in carloads, and green coffee, in carloads, from the points of origin specified in the complaint to Galveston, rates which are lower than the rates contemporaneously maintained on like traffic to Houston and from or to intermediate points.

Authority is asked to continue to charge higher rates on both commodities to intermediate points than to Galveston by way of all the above-described routes in which the Texas & Pacific is the initial carrier. In *Drewes Sugar Co. v. S. P. Co.*, *supra*, we denied relief in respect of the rates on raw sugar via all the above-described Texas & Pacific routes, except those in which the Gulf, Colorado & Santa Fe participates, which routes, apparently, were not considered in that case. In this proceeding substantially the same evidence was introduced. Essentially the same situation exists in respect of the

rates on green coffee as on sugar. No reasons are advanced for a different conclusion with respect to the rates over the routes in which the Gulf, Colorado & Santa Fe participates than that reached in the *Drewes Case* as to the other routes in which the Texas & Pacific is the initial carrier. Although the distance over the Alexandria route is more than 115 per cent of the distance over the routes composed of the Gulf Coast or the Southern Pacific lines to Beaumont and the Gulf, Colorado & Santa Fe beyond, it is less than 15 per cent longer than the short-line route via the Southern Pacific lines. The routes through Beaumont are seldom used because of the resultant short-hauling of the Gulf Coast and the Southern Pacific lines, and the carriers comprising those routes do not control the rates.

As to all other instances where higher rates are maintained to intermediate points than to Galveston a willingness was expressed on behalf of the carriers to conform to the requirements of the fourth section, and some of the departures have been removed by the increases in the rates to Galveston. It is testified that to many of the intermediate points there is no carload movement of green coffee or sugar. Where that situation exists the provisions of the fourth section will be substantially complied with by making the rates to Galveston subject to rule 77 of Tariff Circular 18-A.

Evidence was offered on behalf of the Gulf, Colorado & Santa Fe with respect to the maintenance of lower rates on sugar in carloads to Houston by way of that line through Beaumont than to points between Galveston and Houston, and of lower rates on green coffee in carloads to certain Texas points, other than Galveston, than to other Texas points, but as the applications covering these departures were not set for hearing, they will not be considered.

On behalf of the Southern Pacific lines permission is sought to continue a rate on sugar in carloads from producing points between New Orleans and Lafayette, La., to Galveston and Houston, 1 cent per 100 pounds higher than the rate from New Orleans, and potential water competition was advanced as the justification therefor. It is conceded that there is no actual water competition, and it is not shown that it is necessary to maintain a low rate because of potential water competition, or even that the rate of 17 cents to Galveston was too low. In the *Drewes Case, supra*, we found that—

Steamer service between New Orleans and Galveston had been discontinued for the reason, as understood by defendants, that owing to the European war the vessels found more profitable business elsewhere. However, no water service between these points had been maintained for several years prior to the opening of the war.

The same situation exists with respect to the maintenance of a rate of 18 cents on sugar in carloads from points on the New Orleans, Texas & Mexico, Illinois Central, New Iberia & Northern, and other lines.

At present rates on green coffee in carloads from intermediate points of origin on the Gulf Coast lines and the Illinois Central to Galveston are on the classification basis and are higher than the rates from New Orleans to Galveston. The 16.25-cent rate from ship side, New Orleans, was an import rate, and the maintenance of higher domestic rates from intermediate points is not a departure from the provisions of the fourth section. But the maintenance of rates from intermediate points higher than the 20.5-cent rate from New Orleans proper was a departure from the provisions of the fourth section. It was testified for the carriers that while they have no objection to complying with the requirements of the fourth section in respect of these rates, there is no occasion for commodity rates from intermediate points because there is not and will not be a carload movement of coffee therefrom. The provisions of the fourth section will be substantially complied with by making the rate to Galveston subject to rule 77 of Tariff Circular 18-A.

The fourth section relief sought will be denied. Appropriate orders will be entered.

51 I. C. C.

No. 4694.

ADAMS LEATHER COMPANY ET AL.

v.

CANADIAN PACIFIC RAILWAY COMPANY ET AL.

Submitted November 23, 1918. Decided December 2, 1918.

1. The commodity rates which the Commission in its original and supplemental reports in *City of Spokane v. N. P. Ry. Co.*, 15 I. C. C., 376; 19 I. C. C., 162; 21 I. C. C., 400, found would be just and reasonable in and of themselves were never required to be established. They, and also a schedule of rates agreed upon between the complainants and the carriers and which were put into effect ad interim, were displaced by the readjustment which, after protracted litigation, was finally effected in the structure of rates from eastern defined territories to Spokane, Wash. This readjustment was a general one, made for the purpose of removing undue preference in favor of north Pacific coast points and undue prejudice to Spokane and other intermountain points.
2. Complainants are not entitled to reparation upon basis of the rates found reasonable in the case cited. The essence of their complaint is the relationship of the rates, and no damage having been shown to have resulted to complainants by reason of the fact that during the period of time in question lower rates were maintained to north Pacific coast points than to Spokane, reparation is denied and the complaint dismissed.

H. M. Stephens, J. B. Campbell, and Stephens & Jack for complainants and interveners.

J. M. Geraghty for city of Spokane.

Charles Donnelly and H. A. Scandrett for defendant carriers.

R. Walton Moore for Director General of Railroads.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The original and amended complaints herein, filed in January and March, 1912, respectively, on behalf of numerous receivers and shippers of freight at Spokane, Wash.; several petitions of intervention bringing in new parties complainant, filed at various times in 1912; and supplemental petitions, filed by the original complainants and interveners in January and May, 1914, all seek reparation upon shipments of various commodities moving under commodity rates from eastern defined territories to Spokane between 1910 and 1912. On September 30, 1918, a supplemental complaint was filed making the Director General of Railroads a party defendant.

The reparation claims which the complaint alleges aggregate \$2,000,000, or more, are predicated upon the findings and conclusions

in *City of Spokane v. N. P. Ry. Co.*, 15 I. C. C., 376; 19 I. C. C., 162. The specific contentions are that in our reports in the case cited we found that the rates complained of from eastern defined territories to Spokane were unjust and unreasonable in and of themselves, and prescribed, in lieu thereof, just and reasonable rates as set forth in what is denominated schedule A in our supplemental report, 19 I. C. C., 162; that the complainants and interveners herein claiming reparation were the receivers, during the period in question, of numerous shipments of commodities which were charged at rates found unreasonable by us; that these complainants and interveners paid and bore the charges upon such shipments based upon the rates found to be unjust and unreasonable; that under our decisions in numerous cases, and that of the Supreme Court of the United States in *Southern Pacific Co. v. Darnell-Taenzer Lumber Co.*, 245 U. S., 531, the measure of their damage is the difference between the rates charged and the rates which we found would be just and reasonable, to wit, the schedule A rates, and that they are therefore entitled to awards of reparation upon the basis of the latter rates.

In the original report in the *City of Spokane Case*, 15 I. C. C., 376, promulgated February 9, 1909, we found that the class rates and also the specific rates on 34 commodities, in carloads, then in effect from St. Paul, Minn., and Chicago, Ill., to Spokane were unreasonable and named, in lieu thereof, certain rates which appeared, upon all the evidence of record, to be reasonable. The specific rates from Chicago, it was found, should be made 16½ per cent higher than from St. Paul.

The reparation claimed is solely upon shipments moving under commodity rates, principally upon shipments moving under the less-than-carload commodity rates, with which the original report made no attempt to deal. The record upon which that report was based was incomplete and unsatisfactory with respect to the entire body of commodity rates for the reason that while the complaint attacked generally all commodity rates to Seattle which were lower than the corresponding rates to Spokane, the evidence adduced related to rates on the 34 commodities, in carloads only, whereas on some 1,300 to 1,600 items commodity rates were published at the time on both carloads and less than carloads from eastern defined territories to Seattle, which in most cases were lower than the rates to Spokane and other intermountain points. It was evident that the entire schedule of commodity rates, carloads and less than carloads, would be affected by any reduction of the carload rates on the 34 commodities to which we felt constrained to restrict our findings and conclusions. The report suggested to the carriers that possibly a more comprehensive scheme for the readjustment of the commodity rates, not only to Spokane but to other territory, might

be evolved by them and the requirements of the order entered were therefore limited to the establishment of the class rates and of specific rates on the 34 commodities.

As a result of subsequent developments, the details of which need not be recited here, the carriers, as a condition precedent, established the class rates prescribed, and we thereupon extended the effective date of that portion of our order relating to the commodity rates. The Union Pacific lines, upon a proper showing, having been temporarily released from the operation of the order, the Great Northern and the Northern Pacific having submitted, in response to our suggestion, a tentative scheme of commodity rates on traffic from Chicago and St. Paul to Spokane, the complaint having been amended in material respects, and the amendments and interventions by other affected shippers and communities having provided a basis for a further and more comprehensive investigation both as to the number of rates and the extent of territory, a further investigation was made, upon which, as stated in the supplemental report, 19 I. C. C., 162, 165, four major questions were presented for decision, viz:

(1) Shall the scheme of rates proposed by the Great Northern and the Northern Pacific be approved by the Commission?

(2) If not, what rates shall be established to Spokane from St. Paul and Chicago?

(3) Shall rates be established from territory east of Chicago?

(4) Shall the Spokane rates be extended to other points in that vicinity; and if not, what rates shall be established to the localities which have intervened?

After an extensive inquiry the scheme for commodity rates proposed by the Great Northern and Northern Pacific, although providing for substantial reductions, lower in some instances than those suggested by us in 19 I. C. C., 167, was disapproved; the commodity rates then charged by these carriers from eastern defined territories to Spokane were found to be unreasonable; the former finding fixing commodity rates from Chicago at 16½ per cent over those from St. Paul upon the few commodities then dealt with was modified; and a finding was made of just and reasonable class rates for the future from all eastern defined territories to Spokane and also upon a schedule of about 550 commodities, in carloads and less than carloads, as named in schedule A above referred to. It was also found that joint through rates, both class and commodity, should be established and that the class and commodity rates specified in schedule A would be just and reasonable rates to be applied to other points to which the Spokane rates had been applied in the past. Desiring, however, to proceed with great caution in imposing such radical reductions upon a great volume of traffic, we again deferred making a final order until actual tests should have been made for the

purpose of ascertaining the probable effect which the new rates might be expected to have upon the revenues of the defendants.

The supplemental report expressing these findings and conclusions was promulgated June 7, 1910. Contemporaneously, it may be stated as a matter of information, reports were also promulgated in *Commercial Club, Salt Lake City, v. A., T. & S. F. Ry. Co.*, 19 I. C. C., 218, and *Railroad Commission of Nevada v. S. P. Co.*, 19 I. C. C., 238. In the *City of Spokane Case*, and to a greater or less extent in each of the other cases mentioned, the gravamen of the complaint was of undue discrimination and prejudice to the intermediate territory or intermountain cities and undue preference of the coast terminals and points taking the same rates. On June 18, 1910, a few days after the promulgation of the reports in the *City of Spokane Case* and other cases, the Congress amended the fourth section of the act, whereupon the city of Spokane entered a further plea and contended that the section, as thus amended, forbade in express terms the discrimination against which that locality had so long protested, and which, as stated, was the moving cause of the complaint. The class rates prescribed in the *City of Spokane Case* were in force, but the result of the tests to be made of the probable effect upon defendants' revenue of establishing the schedule A rates, suggested by us, was not yet known when the fourth section questions were thus brought into important relation to the other issues presented in the complaint. In view of this situation we caused the applications of the carriers, which sought authority to depart from the rule of the fourth section in the making of transcontinental rates, to be assigned for hearing and argument at the same time and in conjunction with further hearings in the *City of Spokane Case* and the *Salt Lake City Case*. All were further heard, additional testimony was taken, the entire situation was considered, and a report was promulgated on June 22, 1911.

In the meantime the test checks of the suggested schedule A rates had been completed and we had before us figures showing with substantial accuracy the total loss which would result to the defendants if the rates suggested should be made effective, provided the movement of traffic continued the same, and in our report, 21 I. C. C., 400, 402, 403, we said:

We find nothing in these figures which would incline us to change our opinion as to the reasonableness of the suggested rates or deter us from putting those rates into effect. The loss is substantially what the figures which were before the Commission when its decision was rendered had indicated and was therefore in contemplation when the rates were found to be reasonable * * *.

But after reviewing the questions raised with reference to the fourth section and the carriers' applications thereunder; the duty and authority of the Commission under the amended section; and

giving special consideration to the question whether it could under that section, as amended, make an order in one or both cases which would obviate the necessity of prescribing a schedule of reasonable rates, we stated our conclusions in the following words, 21 I. C. C., 404, 427:

We do not think that any further order should be made for the present in this case. It may be asked why the schedule of rates suggested by the Commission as reasonable should not be ordered in. The answer is that carriers should be permitted in so far as possible to adjust their own tariffs and that it seems probable that in compliance with this order carriers must establish rates in substantial accord with those suggested by us. It should be ever borne in mind that the acute complaint in this case is the discrimination and not the unreasonable rate. Obedience to this order will doubtless result in some rates from the east which are higher and in others which are lower than those suggested by the Commission, since we did not then feel at liberty, as the complainants requested, to make the Spokane rate depend upon the coast rate. But it is likely that the resulting schedule will be more satisfactory to the complainants and no more burdensome upon the defendants. If the carriers establish under this disposition of the case rates to Spokane which are excessive, a further order can be made in this proceeding reducing them to a proper basis.

We did not, for the reasons indicated, issue any order requiring the defendants to establish the schedule A rates, but we did issue a fourth section order prescribing an adjustment under which rates from eastern defined territories to destinations in the intermountain territory were fixed upon what we found would be a reasonable and nondiscriminatory basis as related to the rates contemporaneously in effect to the coast terminals. This order having been enjoined by the Commerce Court, *A., T. & S. F. Ry. Co. v. U. S.*, 191 Fed., 856, the case was taken to the Supreme Court of the United States, which, in a decision rendered June 22, 1914, *Intermountain Rate Cases*, 234 U. S., 476, sustained the order prescribing the adjustment of rates as between Pacific coast territory and intermountain territory.

During the progress of this litigation in the courts the reparation cases here remained in a state of practical discontinuance, but subsequent to the decision of the Supreme Court of the United States they were revived and, together with a number of other cases in which reparation was sought, based upon the rates prescribed in the so-called *Intermountain Cases*, were brought forward for argument upon the general question as to whether or not reparation should be awarded, it being our desire first to consider the bases or the general grounds for the reparation demanded before determining whether or not we should further proceed to the taking of a great volume of evidence in the cases. Thereafter, in September, 1917, the complainants and interveners here were finally heard upon the merits of the reparation claims, and they are now before us for adjudication of

their rights to reparation under our decisions in the *City of Spokane Case, supra*.

In response to a request of the complainants we ordered that the record in the *City of Spokane Case* should be considered in determining their rights to reparation in this case. That record has been examined and from our study of it and all the other evidence of record we are of opinion that:

The language last quoted definitely marks the point of departure from the basis of specific and independently fixed commodity rates to Spokane which we suggested in our original and first supplemental reports in the *City of Spokane Case*. While it is true, as an examination of the reports shows, that we first found that the commodity rates to Spokane were unjust and unreasonable, it is equally true that we never at any time felt justified in requiring the establishment in lieu thereof of a scale of maximum commodity rates in the making of which the measure of rates to Seattle and the relationship between those points should be wholly ignored. This fact is abundantly evident from many expressions in the reports.

At various stages of the proceedings it had been insistently urged by complainants in that case that no rate should be permitted at Spokane higher than to Seattle. In the original report, giving consideration to the proved fact of water competition at Seattle, and the holding of the Supreme Court of the United States in numerous cases that under such circumstances there was no necessary violation of the third or fourth sections, we held that the Seattle rate could not be made the measure of the rate to Spokane and felt that we must therefore undertake to fix specific maximum reasonable rates to the latter point. We realized, however, that the rate question should be disposed of in some more comprehensive manner, but could determine upon the making of no other form of order that would not be open to legal objections, and stated that the carriers might, if they so desired, present some other scheme for the readjustment of the intermountain rates, and that we would strike off the order in favor of the carriers' plan should the latter be approved. We emphasized the fact that the conclusion reached was of necessity in a measure experimental.

In our first supplemental report, although making a complete schedule of class rates, affirming our previous conclusions as to the evident reasonableness of the limited number of commodity rates that were specially considered, and prescribing, upon the whole, an extensive schedule of commodity rates, we nevertheless put the latter forward tentatively, with an invitation to all parties for suggestions and criticisms and deferred making an order pending the test checks which we had directed to be made. And, finally, in the second sup-

plemental report, although finding that the test checks confirmed, substantially, our calculations of the probable effect upon the carriers' revenues and stating that so far as that element in the case was concerned there was then no reason why the rates in the *City of Spokane* and *Salt Lake City Cases* should not then be ordered in, we nevertheless deemed it unnecessary to prescribe the schedule of rates originally proposed to Spokane, observing that

It should be ever borne in mind that the acute complaint in this case is the discrimination and not the unreasonable rate.

and stating that

If the carriers establish under *this disposition of the case* rates to Spokane which are excessive, a further order can be made in this proceeding reducing them to a proper basis.

Our caution and concern as to the possible effect of our action and of a general reduction in rates to Spokane is apparent throughout the reports. Each pronouncement in respect to the reasonableness of the schedule of commodity rates to Spokane was made with reservations because we realized that the rate situation demanded reform upon a broader basis. In April, 1912, while the *Intermountain Cases* were pending in the Supreme Court of the United States, the Commission, having under consideration the propriety of putting into effect, forthwith, the rates found just and reasonable in its report of June 7, 1910, issued an order for a further hearing at Washington, at which all parties were invited to show cause why such rates should not be forthwith established. The carriers responded by proposing schedules of commodity rates to Spokane for carloads only, which were definitely related to the rates to north Pacific coast terminals. These rates, though generally higher than those named in our report of June 7, 1910, were acceptable to the Spokane shippers and were put into effect. We declined to commit ourselves by any expression with respect to the propriety of the proposed rates or whether less-than-carload rates should be finally prescribed. We overruled a motion by defendants, in which the attorney for the city of Spokane joined, to discontinue the case, 23 I. C. C. 454. Finally, the decision of the Supreme Court in the *Intermountain Rate Cases*, *supra*, left the way clear for a more comprehensive adjustment of the intermediate rates upon a basis which, under the competitive conditions then existing, justified the charging of higher rates from defined territories east of the Missouri River to Spokane than to Seattle. The rates originally prescribed and named in schedule A were, therefore, as such, never required to be established. They were definitely abandoned in favor of another basis, viz, one of proper relationship as between Spokane and north coast points. Only incidentally were any of them ever established and then in conformity to the requirements of the gen-

eral readjustment made for the purpose of removing undue preference in favor of the north Pacific coast points and undue prejudice to Spokane and other intermountain points which, as stated, was the moving cause of the complaint in the *City of Spokane Case*.

The question of awarding reparation under our earlier reports in the *City of Spokane Case* was before us in *Inland Seed Co. v. O.-W. R. R. & N. Co.*, 40 I. C. C., 517. In the report in that case we said, in part:

The primary cause of complaint with respect to the rates in this territory is that they exceeded the Pacific coast rates. A question of discrimination, accordingly, is presented rather than a question relative to the reasonableness of the rates. It is significant, therefore, that none of the complainants is shown to have sustained any damage by reason of the lower rates applicable to the coast. * * * We accordingly find that no reparation should be awarded in these cases, based upon our findings in the *Intermountain Cases*, *supra*.

What was there said is equally applicable to the circumstances of this case. The essence of the complaint here is one of the relationship of rates. No damage is shown to have been sustained by these complainants because of lower rates to the north Pacific coast terminals. The rates of which complaint was made have been several times changed. The relationship of rates between Spokane and the terminal points has likewise been completely changed.

Upon consideration of all the facts and circumstances of record, and the contentions of the complainants and interveners in support of their claims for reparation here, we find that reparation should not be awarded.

The complaints will therefore be dismissed.

51 I. C. C.

No. 1150.¹
CITY OF SPOKANE
v.
GREAT NORTHERN RAILWAY COMPANY.

Submitted April 10, 1918. Decided December 2, 1918.

Following *Adams Leather Co. v. C. P. Ry. Co.*, p. 659 *ante*, reparation denied to the complainant herein and complaints dismissed.

J. M. Geraghty and *J. B. Campbell* for complainant.

Charles Donnelly and *H. A. Scandrett* for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

The complaints herein, filed June 28, 1907, subsequent to the action brought in *City of Spokane v. N. P. Ry. Co.*, 15 I. C. C. 376, seek reparation on account of the exaction by defendants of alleged unreasonable rates on steel plates and rivets, in carloads, from eastern defined territories to Spokane, Wash. The rates charged being at the time under attack in the case cited, the disposition of these complaints bided the outcome of the protracted proceedings in the main case.

The general question of reparation under the Commission's findings and conclusions, expressed in its reports in the *City of Spokane Case*, has been considered upon its merits and disposed of in *Adams Leather Co. v. C. P. Ry. Co.*, p. 659, *ante*. The cases here are governed by the decision in that case. The conclusions therein expressed upon the primary question make it unnecessary to discuss or determine certain collateral questions relative to the status of the complainant here as a proper party in interest.

An order dismissing these complaints will be entered.

¹ This report also embraces No. 1151, *Same v. Northern Pacific Railway Company*; and No. 1152, *Same v. Oregon Railroad & Navigation Company*.

51 I. C. C.

No. 9561.

WACO CHAMBER OF COMMERCE

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted September 20, 1917. Decided December 9, 1918.

Rates on glass bottles and fruit jars, in carloads, from certain Oklahoma points to Waco, Tex., found to have been unreasonable. Present rates were initiated by the Director General of Railroads, who is not a party defendant. Complaint dismissed.

H. D. Driscoll, for complainant.

C. S. Burg, for Missouri, Kansas & Texas Railway Company and Missouri, Kansas & Texas Railway Company of Texas and their receiver, Atchison, Topeka & Santa Fe Railway Company, and Gulf, Colorado & Santa Fe Railway Company; *E. H. Thornton* and *Baker, Botts, Parker*, and *Garwood* for Southern Pacific lines in Texas; *Alfred Swingle*, *George Thompson* and *Wilson, Dabney & King* for International & Great Northern and Texas & Pacific railways and their receivers; *W. F. Murray* and *E. B. Perkins* for St. Louis Southwestern Railway Company of Texas; and *T. J. Norton*, for Atchison, Topeka & Santa Fe Railway Company and Gulf, Colorado & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HARLAN, AND HALL.

BY DIVISION 3:

The defendants' rates on glass bottles, flasks, and demijohns, in carloads, from Avant and other named points in Oklahoma, and on glass fruit jars, fruit-jar tops, jelly glasses, and tumblers, in carloads, from the same points, except Okmulgee and Checotah, Okla., to Waco, Tex., are assailed herein as unreasonable and unduly prejudicial to Waco in favor of Dallas, Fort Worth, and other points in northern Texas. The establishment of reasonable rates is asked. Rates are stated in cents per 100 pounds and are those in effect at the time of hearing.

The points of origin are in the northeastern part of Oklahoma. Waco is substantially in the center of Texas, and Dallas and Fort Worth are 95 and 87 miles, respectively, north of Waco. Most of the bottles received at Waco originate at Okmulgee and the fruit

jars at Sapulpa, and the complainant's attack was directed principally against the rates on this traffic. The rates to Waco from all producing points in Oklahoma were, on bottles, 40 cents, minimum 30,000 pounds, and on fruit jars 36 cents, minimum 28,000 pounds, while to Fort Worth and Dallas the rate was 25 cents on both commodities. The complainant asks for a rate of 28.5 cents, which is said to be approximately the equivalent of the basis prescribed in *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 41 I. C. C., 83, hereinafter termed the *Shreveport Case*. In that case we prescribed 50 per cent of the fifth-class rates on fruit jars and bottles for single-line application, plus 2 cents per 100 pounds for joint-line application. The application of this basis from Sapulpa to Waco produces the rate sought. Subsequently we modified our finding in the case cited and prescribed as maximum reasonable rates on bottles and fruit jars specific distance rates which are approximately 50 per cent of the fifth-class rates, 48 I. C. C., 312, 353. The application of this modified basis from Sapulpa to Waco, a distance of 366 miles, would yield a rate of 27 cents. The rates on glass bottles from Okmulgee were: To Waco, 75 per cent of the fifth-class rate; to Dallas, 58 per cent; to Fort Worth, 56 per cent, and to Kansas City, Mo., and Waukesha, Wis., 46.5 per cent. The 28.5-cent rate asked for would be 53.7 per cent of the fifth-class rate.

The complainant contends that it is unduly prejudiced in that the lower rate to Fort Worth and Dallas enables jobbers at those points, with which it is in active competition, to sell in the surrounding territory to better advantage. It also developed the fact of a fourth section departure in that the rate on glass bottles from most of the points to Waco exceeded by one-half cent the combination of locals based on Fort Worth. This departure was not protected by an appropriate application and was therefore unlawful. The complainant also points out that the rate on bottles to Waco was 15 cents greater than to Dallas and Fort Worth, while it was only 1 cent less than the rate to Houston, Tex., about 200 miles farther distant.

On behalf of the defendants it was stated that the 25-cent rate to Dallas and Fort Worth was first established in 1913 as a result of carrier competition; but it is conceded that the rate relationship is unduly preferential of Fort Worth and Dallas and prejudicial to Waco. It is also conceded that there is no transportation reason which would justify the difference between the rates on bottles and on fruit jars to Waco.

An exhibit introduced for the defendants shows that the rates on glass bottles and fruit jars, in carloads, from six representative producing points in Oklahoma to Kansas City, Mo., yielded ton-mile earnings of from 12.2 to 15.2 mills for distances of from 264 to 326

miles; to St. Louis, Mo., 8.2 to 10 mills for distances of from 445 to 539 miles; and to Chicago, Ill., 7.2 to 7.5 mills for distances of from 722 to 753 miles. The average distance from the Oklahoma points to Waco is 376 miles, for which the 40-cent rate on bottles yields 21.2 mills and the 36-cent rate on fruit jars 19.2 mills per ton-mile. Under the modified Shreveport scale the rate for this distance would be as above stated, 27 cents, yielding 14.3 mills per ton-mile. There were also cited for the defendant rates on fruit jars and jelly glasses of 65 cents from Kansas City, Mo., and 70 cents from St. Louis, Mo., to Dallas and Fort Worth prescribed in *Dallas Chamber of Commerce v. A., T. & S. F. Ry. Co.*, 41 I. C. C., 552, for distances of approximately 500 to 700 miles. Waco takes the same rates as Dallas and Fort Worth on traffic from Kansas City and St. Louis. Other rates cited are for various reasons not sufficiently comparable to the rates here at issue to be of any service and need not be discussed.

Upon all the facts of record we find that the rates assailed were unreasonable to the extent that they exceeded those that would have resulted from the application of the modified basis prescribed in the *Shreveport Case*, 48 I. C. C., 353, to the then existing grouping. The Director General of Railroads, in exercise of powers conferred upon the President by the federal control act, has initiated rates which exceed those complained of. These increased rates are not in issue and the Director General has not been made a party defendant. Upon these pleadings the rates so increased are not subject to review in this proceeding. An order dismissing the complaint will be entered.

51 I. C. C.

No. 9782.

E. I. DU PONT DE NEMOURS & COMPANY

v.

PHILADELPHIA & READING RAILWAY COMPANY
ET AL.

Submitted November 4, 1918. Decided December 19, 1918.

Rate on nitrate of soda, in carloads, from Port Richmond, Pa., to Gibbstown, N. J., found to have been unreasonable. Reparation awarded.

Harvey S. Farrow for complainant.

George R. Allen and *William L. Kinter* for defendant carriers.

R. Walton Moore for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HARLAN, AND HALL.

BY DIVISION 3:

The complainant, a corporation engaged in the manufacture of explosives at Wilmington, Del., alleged by complaint filed June 12, 1917, as amended, that the rate of 12.6 cents per 100 pounds charged by the defendant carriers on 55 carloads of nitrate of soda shipped between February 15 and June 6, 1917, inclusive, from Port Richmond, Pa., to Gibbstown, N. J., was unreasonable and in violation of the rule of the fourth section, which prohibits the charging of through rates in excess of the aggregate of the intermediates. Reparation and a reasonable rate were asked. Rates are stated in cents per 100 pounds.

Port Richmond, a Philadelphia station of the Philadelphia & Reading Railway, is on the west side of the Delaware River; Gibbstown, a station on the West Jersey & Seashore Railroad, is on the east side of the Delaware River. The shipments moved over the Philadelphia & Reading to Belmont, Pa., a Philadelphia station; thence over the Pennsylvania and the West Jersey & Seashore, the latter hereinafter referred to as the Pennsylvania, by way of the Delaware River bridge, to Gibbstown, a total distance of 61 miles, constructive mileage. The actual distance is stated to be about 39.5 miles. Charges were collected at the joint fifth-class rate of 12.6 cents, legally applicable under the governing official classification. Contemporaneously a combination of 10.5 cents existed over the route of movement, composed of the fifth-class rate of 4.2 cents from Port Richmond to Belmont, and a commodity rate of 6.3 cents beyond. The departure from the rule of the fourth section was protected by an appropriate fourth-section application which was

heard in another proceeding, now pending. A commodity rate of 3.2 cents applied from Port Richmond to Park Junction, a Philadelphia station about 2.5 miles beyond Belmont. Had this rate been applicable to Belmont the aggregate of the intermediates from Port Richmond to Gibbstown, based on Belmont, would have been 9.5 cents. The defendants admit that the rate charged was unreasonable to the extent that it exceeded 9.5 cents, and express willingness to make reparation accordingly.

A rate of 8.4 cents, sought by complainant, was applicable on nitrate of soda over the route of movement from Port Richmond to Paulsboro, N. J., a station 3 miles less distant from Port Richmond than is Gibbstown. The complainant shows that the Pennsylvania's class and commodity rates generally, including the 6.3-cent rate on nitrate of soda, from Belmont and other Philadelphia stations, were the same to Gibbstown as to Paulsboro; also that a rate of 6.3 cents was maintained by the Philadelphia & Reading on nitrate of soda, in carloads, moving locally over its line from Port Richmond by way of Wilmington, Del., with a floatage service across the Delaware River, to Thompson Point, N. J., the water delivery at Gibbstown, a total distance of 150 miles. The complainant also cites a rate of 10.5 cents on like traffic from Port Richmond to Lake Junction, N. J., 141 miles, and from Philadelphia stations on the Pennsylvania to Lake Junction and other New Jersey points.

For the defendants it was stated that the 8.4-cent rate from Port Richmond to Paulsboro was unreasonably low in view of the expensive movement through Philadelphia and across the Delaware River bridge, and that it was originally established on account of a commercially competitive situation at Chester, Pa., a point across the Delaware River from Paulsboro. They also urge that the rate of 6.3 cents from Port Richmond to Thompson Point is an unfair comparison, as this rate was established by the Philadelphia & Reading over its circuitous route to meet the rate maintained by the Pennsylvania from its Philadelphia stations to Gibbstown. They assert that the rate to Lake Junction and other New Jersey points, cited by complainant, was established to meet short-line competition from the ports of New York, N. Y., and Jersey City, N. J., and showed that the joint class rates over the route of movement from Port Richmond to Gibbstown are generally higher than those applicable to Paulsboro.

Numerous comparisons of commodity rates on nitrate of soda, in carloads, were offered by defendants, including rates for two-line hauls between points in New Jersey, applicable on interstate traffic, of 10.5 cents for 61 miles and 12.6 cents for distances ranging from 71 to 97 miles.

Subsequent to the hearing all of the rates above referred to, including the rate assailed, were increased following *The Fifteen Per Cent Case*, 45 I. C. C., 303, and effective June 25, 1918, were further increased as a result of General Order No. 28 issued by the Director General of Railroads, resulting in rates to Gibbstown of 18 cents from Port Richmond over the route of movement and 9 cents from Philadelphia stations on the Pennsylvania.

By supplemental complaint filed on September 13, 1918, the Director General of Railroads was made a party defendant and the rates initiated by him were brought into issue. Complainant urges that as under federal control all of the terminals in Philadelphia, including Port Richmond, are now considered and treated as belonging to one system, and that as the reasons which would justify a higher rate in joint movement under private management and operation do not now exist, the same rate should be prescribed during the period of federal control as applies from Philadelphia stations on the Pennsylvania, some of which are adjacent to Port Richmond. The answer of the Director General, filed November 1, 1918, states that there has been no change in the physical handling of traffic over the route of movement, such traffic being interchanged at Belmont in the same manner as when the defendant carriers were under private management. The answer also denies that complainant is entitled to any relief and prays that the original and supplemental complaints be dismissed. No further hearing was asked or had. Effective November 22, 1918, the 9-cent rate was established from Port Richmond to Gibbstown over the route of movement.

We find that the rate assailed was unreasonable to the extent that it exceeded 9 cents per 100 pounds; that the complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined upon the present record, and complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the date upon which the charges were paid, and submit same to the defendants for verification. Upon receipt of a statement so prepared and verified, we will consider the entry of an order awarding reparation. As the rate asked in the supplemental complaint is now in effect no order for the future is necessary.

No. 10066.

AETNA EXPLOSIVES COMPANY

v.

SEABOARD AIR LINE RAILWAY COMPANY ET AL.

Submitted November 20, 1918. Decided, December 9, 1918.

Increased rates on sulphuric acid, in tank-car loads, from Savannah, Ga., to Emporium and Mount Union, Pa., found to have been justified. Complaint dismissed.

Winthrop & Stimson and George C. Reynolds for complainants.
R. Walton Moore and D. Lynch Younger for defendant carriers.
R. Walton Moore for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HARLAN, AND HALL.

BY DIVISION 3:

The complainants, receivers of the Aetna Explosives Company, allege that the rates of \$6.90 and \$6.70 per net ton charged on 40 tank-car loads of sulphuric acid shipped from Savannah, Ga., to Emporium and Mount Union, Pa., between January 12 and July 29, 1916, were unreasonable to the extent that they exceeded the contemporaneous sixth-class rates of 33 and 32 cents per 100 pounds, respectively. They ask reparation and the establishment of reasonable rates. By supplemental complaint filed on October 1, 1918, with our permission the Director General was made a party defendant, and the complainants consented to the increases as provided in General Order No. 28 of the rates for the future prayed in their original complaint. The answer thereto of the Director General denies that complainants are entitled to relief and prays that the original complaint and supplemental complaint be dismissed. No further hearing was asked or had. Rates are stated in amounts per net ton, unless otherwise specified, and are those in effect prior to June 25, 1918.

The shipments moved over the defendants' lines and charges except on four shipments to Emporium were assessed at the joint commodity rates assailed. Two of the shipments to Emporium, June 20 and March 13, 1916, were overcharged \$74.76, and two others to the same point, March 13 and July 1, 1916, were undercharged \$7.28. Prior to January 10, 1916, the date on which the rates assailed became effective, the sixth-class rates of 33 and 32 cents per 100 pounds, governed

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by the southern classification, and equivalent to \$6.60 and \$6.40 per net ton, were applicable to Emporium and Mount Union, respectively. Effective November 30, 1916, the sixth-class rates were increased to 46 and 45 cents per 100 pounds, respectively, and thus made higher than the commodity rates.

The development of the movement of sulphuric acid in tank cars from southern producing points was detailed in *International Agricultural Corporation v. L. & N. R. R. Co.*, 22 I. C. C., 488, and *Sulphuric Acid from New Orleans, La.*, 42 I. C. C., 200. In the latter case we set out an unpublished distance scale used by the southern lines in constructing rates from producing points in the south, based upon the rates prescribed in the other case cited above, from Copper Hill, Tenn., to the Carolinas, Georgia, and Florida. The joint commodity rates to Emporium and Mount Union are constructed by using the unpublished distance scale for the divisions accruing to the lines south of Richmond and other Virginia cities, plus the sixth-class specifics, not including the 5 per cent increase which followed the *Five Per Cent Case*, 32 I. C. C., 325, for the divisions of the northern lines beyond. Sulphuric acid, in tank-car loads, is rated fifth class in the official classification, a basis higher than that used for the specifics accruing to the lines north of Richmond.

The following table is self-explanatory:

From Savannah to—	Distance.	Commodity rate charged.	Earnings per ton-mile.	Southern distance-scale rate.	Earnings per ton-mile.	Former sixth-class rates.	Earnings per ton-mile.	Present sixth-class rates.
	<i>Miles.</i>		<i>Mills.</i>		<i>Mills.</i>		<i>Mills.</i>	
Emporium.....	¹ 947	\$6.90	7.28	\$5.85	6.17	\$6.00	6.96	\$9.20
Do.....	² 953	6.90	7.34	6.10	6.40	6.00	6.92	9.20
Mount Union.....	¹ 834	6.70	8.03	5.35	6.41	6.40	7.67	9.00
Do.....	² 840	6.70	7.97	5.35	6.36	6.40	7.62	9.00

¹ By way of Atlantic Coast Line as originating carrier.

² By way of Seaboard Air Line as originating carrier.

For the defendants it is contended that the distance scale based on the rates prescribed in *International Agricultural Corporation v. L. & N. R. R. Co.*, *supra*, decided February 5, 1912, and never used by the carriers as a measure for their rates outside of southern territory, is not a fair standard for the measure of the rates assailed, especially in view of the changed conditions of transportation incident to the war and the manifold increases in the value of the commodity. It is also urged that the former sixth-class basis was not a fair measure of reasonable maximum rates between Savannah and interior eastern cities, because the class rates between these points were made low to meet the competition of the water-and-rail lines, and sulphuric acid does not move by water. Reference is made

to our findings in numerous cases, including *Sulphuric Acid from New Orleans, supra*, that commodity rates are not necessarily unreasonable merely because higher than class rates which have been depressed by water competition.

Rate comparisons disclose that the all-rail sixth-class rates from interior southern cities to Emporium and Mount Union, distances considered, were higher than the sixth-class rates formerly in effect from Savannah, and indicate that the commodity rates from Savannah are in line with the commodity rates from interior points.

It was pointed out on behalf of the defendants that the commodity rates on sulphuric acid from Savannah to a number of interior eastern points for substantially equal and in several cases less distances are the same as the rates assailed. The local sixth-class rate of 32 cents from Savannah to Richmond, for 502 miles, is equal to that requested by complainants from Savannah to Mount Union, 829 miles. It is also shown that the specific of \$3.70 from Savannah to Richmond, based on the unpublished distance scale for 502 miles, as well as the sixth-class specifics of \$3 and \$3.20 from Richmond to Mount Union and Emporium, for 327 and 435 miles, are lower, distances considered, than the rates applied from points in Ohio and Pennsylvania to the same destinations. The rates from the latter points are fifth class, governed by the official classification, except that the rates from Pittsburgh, Pa., and perhaps other points, are about 90 per cent of fifth class. The complainants' objection to this comparison is that the through rates alone, and not the specifics to and from Richmond, are in issue. The assailed rates also compare favorably with rates from acid-producing points in central freight association and trunk line territory to Emporium and Mount Union.

It is also contended for the defendants that the extension of the former sixth-class rates to Savannah would result in discrimination in favor of that point.

We find that the rates assailed have been justified, and an order dismissing the complaint will be entered. The defendants should at once refund the indicated overcharges, with interest.

No. 10024.

WALTER A. ZELNICKER SUPPLY COMPANY

v.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY
COMPANY ET AL.

Submitted April 8, 1918. Decided December 9, 1918.

Charges applicable on steel relay rails, in carloads, from Mangham, La., to Ramsay, La., by way of Natchez, Miss., found to have been unreasonable. Reparation awarded.

John D. Fidler for complainant.

James M. Chaney, A. P. Humburg, and G. B. Auburtin for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HARLAN, AND HALL.

BY DIVISION 3:

The complainant is a corporation engaged in the manufacture of railway and other supplies at St. Louis, Mo. By complaint filed January 8, 1918, as amended, it alleges that the rate of 36 cents per 100 pounds charged by the defendants on four carloads of steel relay rails shipped April 1 and 3, 1916, from Mangham, La., to Ramsay, La., by way of Natchez, Miss., was unreasonable to the extent that the aggregate of the components from Mangham to Natchez, a distance of 88 miles, exceeded \$2.20 per long ton. It asks reparation and the establishment of a reasonable rate. Rates are stated in cents per 100 pounds, except as otherwise indicated.

The shipments moved over the defendants' lines, a distance of 369 miles. They aggregated 286,500 pounds on which charges were collected in the sum of \$1,031.40, based on a combination rate of 36 cents. The rate legally applicable was a combination rate of 34.3125 cents, composed of rates of 7.8125 cents from Mangham to Vidalia, 7 cents from Vidalia to Natchez, 1.5 cents transfer charge at Natchez, 6 cents from Natchez to Jackson, and 12 cents beyond. The shipments were overcharged \$48.35.

For the defendants it was stated that in connection with *The Louisiana Case*, Investigation and Suspension Docket 1000, it was their intention to establish a rate of \$2.20 per long ton on steel relay rails in carloads from Mangham to Natchez, and conceded that charges based upon a higher rate were unreasonable. The combina-

tion rate from and to these points at the time of movement was 14.8125 cents; a rate of \$2.20 per long ton would equal approximately 9.82 cents per 100 pounds.

We find that the charges legally applicable were unreasonable to the extent that those from Mangham to Natchez exceeded the charges that would have accrued at a rate of \$2.20 per long ton. We further find that the complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued on the basis herein found reasonable; and that it is entitled to reparation in the sum of \$191.35, with interest.

The Director General of Railroads in exercise of powers conferred upon the President by the federal control act, has initiated a rate which exceeds that assailed. The increased rate is not in issue and the Director General has not been made a party defendant. Upon the present pleadings the rate so increased is not subject to review in this proceeding.

An order awarding reparation will be entered.

51 I. C. C.

No. 10060.

DENVER & SALT LAKE RAILROAD COMPANY
v.
CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY ET AL.

Submitted September 12, 1918. Decided December 19, 1918.

Increase of 25 cents a ton in joint rates on soft coal from mines on the Denver & Salt Lake Railroad to points in Kansas, Nebraska, Missouri, Iowa, and South Dakota on the lines of connecting carriers participating in the joint rates should inure to the benefit of the Denver & Salt Lake.

Milton Smith and *Elmer L. Brock* for Denver & Salt Lake Railroad Company and its receivers.

C. E. Warner for Missouri Pacific Railroad Company.

Wallace T. Hughes for Chicago & North Western Railway Company and Chicago, Rock Island & Pacific Railway Company.

K. F. Burgess and *A. S. Brooks* for Chicago, Burlington & Quincy Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HARLAN, AND HALL.

The Denver & Salt Lake Railroad Company, hereinafter called the Moffat road or complainant, operates a line of railroad extending from Denver, Colo., to Craig, Colo., 255 miles. Soft or bituminous coal constitutes about 90 per cent of its entire traffic. The mines are located in what is known as the Oak Hills district.

In *Coal Rates from Oak Hills, Colo.*, 30 I. C. C., 505, we prescribed joint rates on coal from the Oak Hills district to destinations in Kansas, Nebraska, and Missouri, on the Chicago, Rock Island & Pacific Railway, hereinafter called the Rock Island, and in a supplemental report, 35 I. C. C., 456, prescribed the manner in which those joint rates should be divided between the respondents. In *Hayden Bros. Coal Corporation v. D. & S. L. R. R. Co.*, 39 I. C. C., 94, joint rates were prescribed on coal from mines in the Oak Hills district to destinations in Kansas, Nebraska, Missouri, Iowa, and South Dakota, on the Atchison, Topeka & Santa Fe Railway, the Missouri Pacific Railway, the Chicago & North Western Railway, and the Chicago, St. Paul, Minneapolis & Omaha Railway. These lines will hereinafter be called, respectively, the Santa Fe, the Missouri Pacific, the North Western, and the Omaha. Divisions of the
51 I. C. C.

joint rates to be accorded the several lines were fixed by us in a supplemental report in that case, 45 I. C. C., 236. Rates and divisions will be stated in dollars and cents per ton of 2,000 pounds.

The joint rates prescribed in the *Hayden Bros. Case, supra*, were the same as those applicable from the Walsenburg, Colo., district, which is served by the Denver & Rio Grande Railroad and the Colorado & Southern Railway, except that to certain stations on the Santa Fe rates 50 cents higher than from Walsenburg were permitted, and to certain stations on the North Western rates not exceeding those from the Rock Springs, Wyo., fields. On traffic to Rock Island stations we allowed the Moffat road for its haul from the mines to Denver divisions of \$1.18 on lump coal and \$1.12 on nut, slack, and pea coal. To destinations on the Santa Fe, the Missouri Pacific, the North Western, and the Omaha, divisions of \$1.15 on lump coal and \$1.10 on the lower grades were prescribed.

On October 19, 1917, the Moffat road, individually, filed fifteenth section application seeking an increase of 25 cents in its joint rates to destinations in Iowa, Kansas, Missouri, Nebraska, South Dakota, and Wyoming. It pleaded the need of additional revenue for the immediate improvement of its road and equipment in order to handle the coal tonnage during the winter months of 1917-18. The application was accompanied by a statement showing an operating deficit of \$73,102.63 for seven months ended July 31, 1917, and also a stipulation by various coal operators, representing 90 per cent of the coal shipped over that road, requesting that we grant until April 30, 1918, the increase sought. Upon this showing we permitted the increased rates to become effective November 24, 1917, but to expire on April 30, 1918.

In seeking the increase the Moffat road represented to us that connecting carriers handling the bulk of the traffic from the Oak Hills district were willing that the entire increase should accrue to its benefit. Various disputes subsequently arose between the Moffat road and its major connections regarding the disposition of the increase. On February 15, 1918, the complaint in this case was filed, asking us to determine and fix just and reasonable divisions of the charges collected on all shipments of coal transported during the period from November 24, 1917, to April 30, 1918, inclusive. The delivering and intermediate lines named in the complaint will hereinafter be collectively referred to as the defendants.

Something is said of record as to nonreceipt by defendants of copies of the fifteenth section application, our order thereon, and other notices. The concurrences filed by the carriers parties to the tariff of the Moffat road containing the joint rates concerned are general in their terms and no impropriety was committed by that road in submitting the application individually.

In support of its plea for the whole increase the Moffat road referred to the difficulties encountered in the movement of traffic from the Oak Hills district to Denver. The average cost of handling all freight was stated to be 8 mills per ton-mile, which, however, includes expenses of less-than-carload and short-haul traffic. The difficult operating conditions were fully considered in the *Hayden Bros. Case* and recited in the report therein. The record in the present case does not disclose any materially greater difficulties than existed previously, except that the average distance from the mines to Denver has increased, due to the opening of new mines west of Steamboat Springs, Colo., and the extension thereto of the Oak Hills rate.

When in *The Fifteen Per Cent Case*, 45 I. C. C., 303, we authorized an increase of 15 cents a ton in western coal rates, the Moffat road and its connections shared the increase in proportions computed upon the basis of divisions which we determined for the joint rates prescribed by us from the Oak Hills district. By comparison of its divisions and earnings thereon, in mills per ton-mile, with earnings received by the other lines, it insists that its proportion of the joint rates was not adequate to cover the bare cost of operation, and that even if the 25-cent increase should inure solely to it the earnings would be insufficient to cover cost of operation and interest and taxes, much less a fair return on the investment.

It is argued that the increase was permitted during the time limited purely on the showing of the Moffat road's financial distress and the urgency of immediate physical betterment set forth in its application, and that the purpose of the increase should not be defeated by the unwillingness of certain connections to suffer it to be applied to the ends for which obtained.

The attitude of defendants, with the following exceptions, is that the 25 cents should be apportioned upon the basis laid down by us in the *Hayden Bros. Case* and *Coal Rates from Oak Hills, Colo.*, *supra*, or upon a prorate basis. The Chicago, Milwaukee & St. Paul Railway by answer assents to retention by the Moffat road of the full amount. The Chicago, Burlington & Quincy Railroad also assents, except as to traffic destined to points included in the *Hayden Bros. Case*, and traffic involving hauls over three or more lines. In these instances it insists on divisions in line with the basis prescribed by us in the above cases. Exhibits were submitted on behalf of the Rock Island and Missouri Pacific displaying the respective divisions of their lines and the Moffat road, accompanied by testimony regarding operating conditions, cost of operation, comparative length of hauls, displacement of tonnage originating on their roads by tonnage from the Moffat road, and other matters which largely

govern the division of revenues. The Rock Island contends that its operation in Colorado has resulted in huge annual deficits for several years, its average operating ratio for five years, to and including 1917, being 91.58 per cent. These figures embrace all traffic, both state and interstate, moving within or through Colorado, and while it is said that no record is kept which reflects the cost of handling coal it is observed that coal, since 1910, has been 24.79 per cent of the total traffic. How much of the deficit on all traffic is due to coal transportation is, at most, conjectural.

As previously stated, coal constitutes about 90 per cent of complainant's tonnage. Its operating deficit for the six months ended July 31, 1917, was \$73,102.63; for the three months ended March 31, 1918, \$200,183.74. In permitting the increase of 25 cents we had before us a showing that complainant was confronted with an approaching season of heavy traffic and the necessity for immediate restoration of roadbed and equipment, and that its revenue on about 90 per cent of the total traffic was not meeting operating expenses. It is true that we were dealing with joint through rates in their entirety and not with a mere factor; nevertheless, the purpose of the increase for the stated period was to meet a defined and acute emergency, and to that purpose it should be applied.

By a second fifteenth section application, filed April 9, 1918, the Moffat road asked authority to continue indefinitely the rates which were to expire April 30, 1918, and this was granted May 25, 1918. The old rates were automatically restored as of May 1, 1918, until such time as new schedules containing the rates authorized became effective, June 3, 1918. Subsequently these rates were further increased to the extent of 50 cents by virtue of General Order No. 28 of the Director General of Railroads and our Fifteenth Section Order No. 666, of May 27, 1918, issued in respect of rates between points on the lines of carriers under federal control and points on lines of carriers not under federal control. The determination of divisions of these rates is not before us in this proceeding, the Director General has not been brought in as a party defendant, and nothing stated in this report should be construed as an expression of views thereon.

HALL, Commissioner:

The foregoing is substantially the report proposed by the examiner, which was served upon counsel under a rule permitting the filing of exceptions within 20 days from the date of service. No exceptions have been filed. Upon consideration of the record the foregoing proposed report is adopted as part of this report. Part of the revenues resulting from the increase of 25 cents in the joint rates which became effective November 24, 1917, was earned after a

majority of the carriers here in controversy were taken under federal control, effective for accounting purposes at 12 o'clock midnight of December 31, 1917, and by section 12 of the federal control act apparently became the property of the United States, however divided between complainant and its connections. The record is bare as to this. The Director General has not been brought in as a party defendant, although the complaint was filed and the hearing had during the period of federal control. The issues must be decided upon the record made, and an order will be entered giving effect to the findings and conclusion reached.

No. 9909.

R. O. STOUGH

v.

KANSAS CITY SOUTHERN RAILWAY COMPANY ET AL.

PORTIONS OF FOURTH SECTION APPLICATIONS

Nos. 1951 AND 799.

Submitted January 20, 1918. Decided December 4, 1918.

1. Rate legally applicable on sweet potatoes, in carloads, from De Queen, Ark., to Tulsa, Okla., found to have been unreasonable. Reparation awarded.
2. Fourth section relief denied.

C. D. Mowen for complainant.

J. M. Souby for Kansas City Southern Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HARLAN, AND HALL.

BY DIVISION 3:

The complainant, a resident of Fort Smith, Ark., alleges by complaint filed October 8, 1917, that the rate charged by defendants on a carload of sweet potatoes shipped November 2, 1915, from De Queen, Ark., to Tulsa, Okla., was unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of the long-and-short-haul rule of the fourth section. He asks reparation and the establishment of a reasonable rate. Those portions of Fourth Section Applications Nos. 1951 filed by the Kansas City Southern Railway and 799 filed

by the St. Louis-San Francisco Railway, in which authority is sought to continue rates on sweet potatoes from De Queen to Tulsa by way of the Kansas City Southern, Westville, Okla., and the St. Louis-San Francisco higher than the rates contemporaneously maintained on like traffic to more distant points, were heard with this case. Rates are stated in cents per 100 pounds.

The shipment, weighing 31,500 pounds, moved as routed by the shipper over the Kansas City Southern to Westville and the St. Louis & San Francisco Railroad, now the St. Louis-San Francisco Railway and hereinafter called the Frisco, beyond, 345 miles. Charges were collected in the sum of \$166.95. A joint rate of 40 cents was legally applicable. The shipment was therefore overcharged \$40.95. Complainant asks reparation on the basis of a 30-cent rate.

A joint rate of 30 cents contemporaneously applied from De Queen to Tulsa over other routes, all shorter than that used. The short line and logical route is over the Kansas City Southern to Panama, Okla., and the Midland Valley Railroad beyond, approximately 247 miles. At the time of movement and also at the time of submission a joint rate of 30 cents applied from De Queen to Columbus, Cherryvale, Coffeyville, Fort Scott, Independence, Mound Valley, Neodesha, Parsons, and Yates Center, Kans., and a rate of 37 cents from De Queen to Arkansas City, Caldwell, Hutchinson, Kingman, Newton, Wichita, Wellington, and Winfield, Kans. These rates applied by way of Westville and the Frisco through Tulsa. These departures from the provisions of the fourth section were protected by appropriate applications which were heard with this case.

Our conclusions with respect to our power to consider at this time applications filed by carriers for relief from the provisions of the fourth section of the act to regulate commerce are set forth in *Johnston v. A., T. & S. F. Ry. Co.*, 51 I. C. C., 356, decided November 11, 1918, and need not be repeated here.

It was testified for the Kansas City Southern, the only defendant represented at the hearing, that it was never the intention of the carriers to have the rates from De Queen to the Kansas points cited apply by way of Westville and the Frisco through Tulsa; that the establishment of that route was due to an oversight in the publication of the tariffs and will be eliminated if we determine that the route is open; and that the logical route from De Queen to the Kansas points is over the Kansas City Southern direct to Gulfton, Mo., and thence over the Frisco through Columbus, Kans. It is also shown that over this route or that through Tulsa traffic passes through Columbus, which point is 158 miles farther from De Queen by way of Westville and the Frisco through Tulsa than by way of the route through Gulfton. It is stated on behalf of the carriers

that they do not seek relief from the provisions of the fourth section over the route of movement. The fourth section applications will be denied to the extent that they are involved.

As above stated, the distance over the route of movement from De Queen to Tulsa is 345 miles. Complainant points to the fact that the 30-cent rate applicable by way of Gultton and the Frisco beyond, for example, to Mound Valley, Cherryvale, and Neodesha, 336, 346, and 360 miles, respectively, and the 37-cent rate to Arkansas City by way of the Kansas City Southern to Panama and the Midland Valley beyond, 359 miles, demonstrate the unreasonableness of the rate charged.

We find that the rate legally applicable was unreasonable to the extent that it exceeded 37 cents per 100 pounds; that complainant made the shipment as described and paid and bore the charges thereon; that he has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that he is entitled to reparation in the sum of \$50.40, with interest. This amount includes the overcharges above referred to.

Orders awarding reparation and denying fourth section relief will be entered; but inasmuch as the President by General Order 28 of the Director General of Railroads has initiated rates for the transportation here involved, no order for the future can be made.

No. 10048.

PNEUMATIC SCALES CORPORATION, LIMITED,

v.

ABERDEEN & ROCKFISH RAILROAD COMPANY ET AL.

Submitted December 5, 1918. Decided December 6, 1918.

1. While the general use by shippers of a steel container would reduce the loss-and-damage claims of the carriers due to certain causes, this fact is not sufficient to justify a rule requiring the carriers to compute freight charges on commodities shipped in such containers at the net weight of the contents.
2. Rates and rules applicable on shipments in steel containers, as compared with the rates and rules applicable on shipments of the same commodities packed in or protected by other appliances, not shown to be unjust, unreasonable, unjustly discriminatory, or unduly prejudicial.
3. Rates on steel containers returned collapsed not shown to be unjust, unreasonable, or unjustly discriminatory.

Edgar Watkins for complainant.

Alexander H. Elder, R. Walton Moore, Robert W. Fyfe, W. A. Cole, and James Stillwell for defendants.

James C. Jeffery, Frank M. Swacker, W. J. Tomkins, George B. Webster, and Walter Williams for various interveners.

R. Walton Moore for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

Complainant holds patents covering various parts and features of a collapsible steel shipping container. By its complaint herein it alleges in substance (a) that the rates charged on commodities shipped in such containers and on the return movement of such containers, collapsed, are unjust, unreasonable, unjustly discriminatory, and unduly prejudicial, in violation of sections 1, 2, and 3 of the act, and (b) that such container is an instrumentality of transportation furnished by the shipper to the carrier, for which the shipper is entitled to an allowance under section 15. On the basis of these allegations it seeks orders requiring the railroads of the country to compute freight charges on all commodities shipped in such containers on the net weight of the contents at existing rates on the same commodities in wooden boxes and to establish special

reduced rates for the return of the steel containers collapsed. The general theory underlying the complaint is that the railroads are to-day transporting shipments in containers not sufficiently strong and pilfer-proof, with the result that they are paying out millions of dollars annually in loss-and-damage claims and are not securing the maximum carloading; that the steel containers proposed by complainant are of such strength, and of such pilfer-proof construction, that if substituted for the present containers loss of and damage to shipments would be reduced, and carloading increased; and that, therefore, a rate preference should be given to commodities shipped in such containers and to the return movement of such containers collapsed. All the railroads in the country were made defendants, and in their answers oppose the relief sought. Various manufacturers and associations of manufacturers of other kinds of shipping containers intervened and contended that the relief sought should be denied, or, if granted, extended to apply also on commodities shipped in such other containers.

THE CONTAINER DESCRIBED.

Complainant's container is rectangular in shape and is made of three-ply steel of 32 gauge, the middle ply being corrugated and welded to the other two plies throughout their entire area of contact. The top and bottom as well as the ends and sides of the box are hinged together in such a way that the box may be collapsed to occupy a comparatively small space. When set up the top and bottom are locked by specially designed clamps, which apparently have to be broken before the box can be opened. The inside contour of the container has no projections or depressions; the handles on either end are countersunk and, when pushed down, are substantially flush with the outside surface. The record shows that the box combines extraordinary strength and durability with low weight for a metal container. Although only a limited number of shipments have been made in the box, it may be fairly described as an excellent shipping container for many commodities.

THE LOSS-AND-DAMAGE PROBLEM.

The payments by railroads on account of loss-and-damage claims have been a substantial drain upon their revenues for many years. Beginning in 1906, when the act was so amended as to require careful scrutiny of all payments by carriers to shippers, special attention began to be focused upon this source of expense. The following table shows how freight-claim payments compared with freight revenue for each year from 1906 to 1916:

¹ Ending Dec. 31.

It will be seen from the above table that the loss-and-damage bill of the railroads as a whole gradually increased up to and including 1914, but that for the years 1915 and 1916 it decreased. The record proves that this significant change was due in large part to a special investigation undertaken by this Commission in 1914 into the causes of loss-and-damage claims. As a result of that investigation the whole subject was brought sharply to the notice of the higher executive officials and boards of directors of the railroads, and more effective means of combating the evil were devised and put into effect.

The following tables constitute a composite picture of what the Commission's investigation in 1914 developed. Table A shows the different commodities whose transportation gives rise to loss-and-damage claims; Table B, the chief causes of loss and damage. Both tables cover the total payments made during the calendar year 1914 by all steam railroads which had annual revenues exceeding \$1,000,000.

TABLE A.

TABLE B.

THE STEEL CONTAINER AS A REMEDY FOR THE PROBLEM.

The above tables were the subject of a good deal of comment by both complainant and defendants, and naturally there was some conflict of opinion as to which commodities and what causes of loss and damage might properly be eliminated from consideration. It is obvious that many of the commodities and certain of the causes of loss and damage would not be affected by the use of a steel shipping container. The record indicates that a steel shipping case like complainant's, if quite generally used, would probably reduce the loss-and-damage bill of the carriers on the commodities numbered and classified in Table A as follows: (1) Boots and shoes; (2) clothing, dry goods, and notions; (3) butter and cheese; (4) eggs; (10) flour and other mill products; (11) sugar; (12) groceries; (13) wines, liquors, and beers; (14) tobacco and tobacco products; (19) glass and glassware; and (24) all other commodities. It further shows that, while other causes might be slightly affected, the following numbered and classified causes of loss and damage would be reduced to some extent by the use of a steel container like complainant's: (3) Concealed loss, (6) fire, (7) wrecks, (9) defective equipment, (11) rough handling of cars, and (13) improper handling and loading of freight and improper packing and packages. The total amount of the claims paid during the calendar year 1914 on the above-named classes of commodities, except "all other commodities," on account of the causes specifically referred to is shown by the record to have been \$3,276,777.89. The most important commodities moving in containers are included in the classes numbered 1 to 23 in Table A. The commodities classified as "all other commodities" include products of the mine and forest which do not move in containers, but on which the claims for loss and damage are

quite heavy. It follows that the use of a steel shipping case would not materially reduce the loss-and-damage claims on commodities classified as "all other commodities."

On account of the abnormally high prices of all commodities and of increased congestion, embargoes, and deterioration of labor, the loss-and-damage bill of 1917 was in the neighborhood of \$50,000,000. Complainant represents that the general use of its container would save the carriers annually about 20 per cent of that amount, or \$10,000,000, while under defendants' estimate the "probable actual saving" would be less than 3 per cent, which is \$1,500,000.

EFFECT ON CARRIERS' REVENUES.

Loss in revenue on loaded haul.—Shipments in wooden, fiber, and all other kinds of containers are now charged for at the gross weight of the contents and containers. If complainant's proposition of computing freight charges on shipments in its container at the net weight of the contents were adopted, the carriers would lose whatever revenue they are now earning on the weight of the containers which would be displaced by the steel container. Complainant estimates that this loss in revenue would not be more than \$5,800,000 annually, while defendants figure that it would be at least \$41,000,000 annually on wooden boxes alone. Both of these estimates are based upon so many factors which are also estimates that little weight can be given to them, but we are convinced from the record that the correct amount would be closer to the larger than to the smaller figure. One exhibit submitted by defendants shows that on 166 typical commodities regularly shipped in standard containers the weight of the container ranges from about 4 per cent on certain commodities in strawboard containers to about 55 per cent for certain commodities in wooden boxes, and that if a minimum carload of each of the commodities were transported from Chicago to Denver, the total revenue based on gross weights at the rates in effect at the time of the hearing would be \$33,313.20, as compared with \$28,425.79 at net weights. The difference is \$4,907.41, or 14.7 per cent.

New revenue on collapsed containers returned.—In the western classification the present rating on returned carriers, with but few exceptions, is fourth class. In the southern classification the present rating on iron or steel shipping boxes, k. d., is third class, less than carloads, and fifth class, carloads. In the official classification the present rating on steel boxes returned collapsed is third class, less than carloads, and fifth class, carloads. The western lines have decided to cancel all ratings lower than fourth class on returned carriers; the southern lines have adopted a sixth-class rating on

collapsed steel boxes, any quantity; and the eastern lines propose to establish a fourth-class rating on such containers, less than carloads, continuing the rating of fifth class, carloads. Complainant wants a rating of fifth class, any quantity, in eastern territory, and of one-half fourth class, any quantity, in western and southern territories.

Complainant estimates that the ratings requested by it on the return movement of its containers, collapsed, would give the railroads \$8,000,000 in new revenue, but this estimate is too conjectural. On the other hand, defendants insist that the ratings requested are so low that they would produce no profit. The record indicates that the steel containers, if granted the special treatment requested on the loaded trips, would not always return empty to the original point of shipment. One enterprising firm has already conceived the idea of establishing assembly centers for empty steel containers. Under this plan the containers might not be owned by the shippers at all, and the exchanges collecting them would see to it that the containers always moved loaded, so that no freight charges would be paid on them under the proposed rules. It was also pointed out that where purchasers were dissatisfied with goods received in these containers the goods would be returned in them and the carriers would receive no revenue on the containers in either direction.

Increase in operating expenses.—The transportation of the additional weight which would result from carrying freight in steel containers instead of wooden and fiber boxes would increase operating expenses. Defendants did not attempt to guess what this increase would be, but in its brief complainant submits a calculation showing that it would be less than \$1,000,000 annually. This calculation was based on the theory that the fuel bill only would be increased.

EFFECT ON CAR LOADING.

Complainant's shipping case is designed to support any load of any material to the car roof. Complainant represents that the containers now in general use are not sufficiently strong to permit the maximum loading of cars, and calls attention to annual reports of the Commission, which show that the average loading of cars is not much over half of the average capacity of cars. The average loading of cars, as reported to the Commission, includes all less-than-carload as well as all carload traffic, and is based on the truck capacity of cars and not on their cubic capacity. Included in such averages are a large number of so-called merchandise cars, which are light loaded merely because more freight is not offered for shipment, and also a large number of cars which are loaded with light and bulky freight to full cubic capacity, but only to a comparatively small percentage

of their truck capacity. It is therefore clear that the average loading of cars is comparatively low for some reasons unrelated to the character of the shipping containers.

Witnesses for defendants testified that they knew of no instances where cars had moved light loaded because of the fragile character of the containers used. Under private control, competition led the carriers to run merchandise cars on schedule time regardless of the loading; under government control, it seems to be the practice to load such cars to the roof before they leave the terminals. The result of this change of policy was illustrated by statistics filed of record. For example, the Wabash reported that the average loading of its merchandise cars out of Chicago was 15,230 pounds, 15,039 pounds and 17,801 pounds for January, February, and March, 1917, respectively, as compared with 22,089 pounds, 23,747 pounds, and 21,659 pounds for the same months of 1918, respectively.

Defendants also point out that on certain commodities in containers the revenue carloading might be reduced by the use of complainant's box. It is obvious that the net weight of commodities loaded to the car roof in steel containers would be less than the gross weight of the same commodities loaded to the car roof in fiber or wooden boxes.

COMMERCIAL CONSIDERATIONS.

The adoption of a rule requiring carriers to compute freight charges on commodities shipped in complainant's steel container at the net weight of the contents would be tantamount to a rule requiring shippers to use the steel container or be penalized for not using it. One of the tests of the reasonableness of a rule of the latter character is to determine whether the benefits derived from its operation by the carrier would be commensurate with the burden of its application on the shipper. *Reynolds Tobacco Co. v. A. & S. Ry. Co.*, 39 I. C. C., 371; *Sea Gull Specialty Co. v. Baltimore Steam Packet Co.*, 27 I. C. C., 267.

A steel container would cost a great deal more than wooden or fiber boxes, but it would be used over and over again whereas a properly constructed wooden or fiber box is only good for two or three trips. The general use of a steel container would necessitate a substantial initial investment by the shipper. The probable selling price of complainant's box was estimated at the hearing as high as \$20 each. On account of the interest charges a manufacturer or wholesaler would not permit customers to keep such expensive containers in stock for any considerable period, as is now done with wooden or fiber boxes. It would require some expense to keep track of the containers, as it would generally not be practicable for the

shipper to invoice the value of the container to his customer. The return feature would involve additional carting at both origin and destination, and repeated use of the container would of course necessitate further expenditure for maintenance.

The representative of a large wholesale grocery house in Chicago testified that 500,000 containers making an average of eight trips per year would be required to handle its business. At an average cost of only \$5 each the interest charges alone on its investment in containers would probably be \$150,000 per year. Its total claims on coffee shipments in the year 1917, for which it used 60,000 boxes, aggregated only \$55.75. A witness for a large manufacturer stated that in 1917 it used over one million containers and that its total claims amounted to \$409.55. A manufacturer of starch uses an average of 20,000 containers per day; its claims for loss and damage average less than 59 cents per car. In the *Sea Gull Specialty Company Case, supra*, we found that the complainant had shipped 325,000 cases of baking powder in the year 1912, and that the loss-and-damage claims resulting therefrom totaled only \$46.01.

DISCRIMINATION AGAINST OTHER CONTAINERS.

The inventor of complainant's container testified as follows in regard to the design and construction of the box:

The first object is to build this box, not with regard to the weight within, but to the supporting strength from without. I believe there is the essence of the whole box proposition, that the container should be able to support any load of any material to the car roof, whether it contains silk hats, eggs, or tacks.

The theory is that all containers should be of uniform strength and construction. They should be designed not with primary consideration for the character and weight of the particular commodity to be loaded in a particular container but with primary regard to the possibility of the heaviest miscellaneous commodities being shipped in the same car. In other words, the hat manufacturer should ship silk hats in a steel container, because a hardware dealer in the same city might chance to be making a heavy shipment of tacks on the same day to the same destination.

Because many of the containers now in general use do not fulfill the qualifications comprehended in the above theory, complainant proposes, in effect, that they should be discriminated against by having commodities loaded in them charged for at gross weights, while the same commodities loaded in its container shall be charged for at net weights. As hereinbefore indicated, this discrimination would amount to about 15 per cent of the freight charges. The decided cases, however, lend no support to complainant's theory. They stand for the principle that the adequacy of a container should be determined with regard

to the character and weight of the commodity to be shipped in it, and not with regard to the maximum load of the heaviest commodity which might be loaded in it, nor by a consideration of the heaviest load of other freight which might be stowed on top of it in shipment. *Sea Gull Specialty Co. v. Baltimore Steam Packet Co.*, *supra*; *Reynolds Tobacco Co. v. A. & S. Ry. Co.*, *supra*; *Millinery Jobbers' Asso. v. American Express Co.*, 20 I. C. C., 498; *Pridham Co. v. S. P. Co.*, 30 I. C. C., 117.

The record indicates that the elements of complainant's theory have little or no application to straight carload shipments of any commodity. This is because a container constructed with due regard to the character and weight of the commodity to be shipped in it will support the weight of that commodity loaded to the car roof. There would be no foundation for a rule under which a carload of breakfast food in steel containers was charged for at the net weight of the breakfast food, while a carload of the same commodity in fiber-board boxes was charged for at the gross weight of the breakfast food and boxes. Moreover, complainant admits in its brief that there are some commodities "which now move safely and which will continue to move safely in fiber and wooden boxes." As to those commodities in carload or less-than-carload quantities, there would be no basis for complainant's proposed rule. It follows that, even if complainant's theory could be properly applied to certain specific commodities in less-than-carload shipments, it can not support the general relief prayed for in this case.

In this connection it may be added that there are now in general use many different types of metal containers which are claimed to have points of superiority over the corresponding types of wooden containers, but on which no preferential rule is applied. One oil company has 522,000 steel barrels in use.

CLASSIFICATION AND TARIFF RULES.

Various classifications and tariffs of defendants contain rules providing for the free transportation of attendants and caretakers with live stock, poultry, and other live freight, and also of dunnage, stoves, and various other appliances and methods of protecting freight in transit. The failure of defendants to provide a similar rule in respect to complainant's steel container is alleged to be unduly prejudicial. The rules referred to, however, generally apply only to certain specific commodities, are the outgrowth of conditions peculiar to those commodities, and are therefore not to be identified with the issues before us. See *Dunnage Allowances*, 30 I. C. C., 538, 544.

It is represented that the classifications of defendants contain ratings on some commodities "in wooden boxes only," and in other ways exclude the use of complainant's container on any terms. Defendants state that they have never been asked to permit the transportation of the commodities referred to in steel containers and that there is no disposition on their part to discriminate against complainant's box or any other steel container. They are willing to amend their classifications so as to provide that all commodities permitted to be shipped in wooden boxes may also be shipped in steel containers on the same terms.

Complainant also suggests that the classifications of defendants are deficient in not requiring wooden and metal boxes to meet adequate specifications before they are accepted as containers. We agree with this suggestion. In the *Pridham Case, supra*, we stated that proper specifications for wooden boxes was a subject to which the attention of both the wooden-box makers and the carriers might well be directed, "to the end that some restriction will be placed upon the insecure wooden container." As a result of the investigation made in that case, we were also convinced that some commodities should not be accepted for transportation in fiber boxes. Defendants state that these suggestions have not been carried out because the wooden-box interests would not agree on specifications for standard wooden boxes and that, in the absence of such specifications, the carriers could not fairly "tighten up" the specifications and rules in respect to fiber boxes. The present record demonstrates that such specifications are necessary and that they can be drawn up and promulgated. Recently the wooden-box manufacturers and shippers of canned goods agreed upon wooden-box specifications for canned goods, and these specifications were approved by the Food Administration. If the carriers and wooden-box makers will "put their minds" on the subject, the same thing can be done in respect to other commodities.

THE FIFTEENTH SECTION ISSUE.

On the theory that it is the duty of carriers to protect freight in transit and that a shipper who uses complainant's steel container performs that service for the carrier, complainant contends that its container is an instrumentality of transportation for the use of which shippers are entitled to an allowance from defendants under section 15 of the act. The services or instruments of transportation for the furnishing of which shippers may receive an allowance from carriers are services or instruments which it is the duty of the carrier to furnish, but which, for reasons of its own, it chooses to arrange

with shippers to supply. Carriers have the right to decline shipments which are not so prepared or packed as to render them safe for transportation. *Dunnage Allowances, supra*. The present classifications require that "all containers must be strongly made from material of sufficient strength to protect the articles against the ordinary risks of transportation," and provide further that shipments will not be accepted unless the containers "are of sufficient strength and security to afford reasonable and proper protection to the freight." The present ratings on articles in boxes are predicated on the box furnishing what a witness for complainant once described as "100 per cent protection," which is protection against the ordinary hazards of transportation. Under the circumstances there is no basis for an allowance to shippers using complainant's steel container.

McCHORD, *Commissioner*:

The foregoing is substantially the statement of facts as prepared by the examiner and served on the parties. On October 21, 1918, on application of the complainant, an order was issued making the Director General of Railroads a party defendant to the proceeding. The complainant filed exceptions to the examiner's proposed report, and, on November 13, a written argument was filed on behalf of complainant. On December 5, 1918, the Director General filed answer. No such change of circumstances or conditions of transportation have resulted from the operation of defendants under the Director General as to require any special consideration in the disposition of this case.

The complainant's exceptions are directed to alleged errors in findings of fact, and to failure to recommend that the relief prayed be granted. We have examined the record and find that the facts are substantially as stated by the examiner and they are adopted as our findings.

Under the facts of record we are of opinion, and so find, that the rates and rules applicable on shipments packed in complainant's container, as compared with the rates and rules applicable to shipments of the same commodities packed in other containers or protected by other appliances have not been shown to be unreasonable, unjustly discriminatory, or unduly prejudicial; and that the ratings on complainant's container returned collapsed are not shown to be unreasonable or otherwise in violation of law.

It is assumed that defendants will provide as agreed by them at the hearing for the transportation of commodities in complainant's container that are now permitted to be transported in wooden boxes.

The complaint will be dismissed.

No. 9485.
B. F. HURST ET AL.
v.
BOISE VALLEY TRACTION COMPANY ET AL.

Submitted December 4, 1918. Decided December 27, 1918.

Rates on fruit in carloads from certain points on the line of the Boise Valley Traction Company to defined territories, Colorado common points and east, found unduly prejudicial to the extent that they exceed the blanket rates in effect from Boise, Idaho, via the Oregon Short Line Railroad and its connections to the same destinations.

Givens & Barnes for complainants.

J. B. Hawley for Boise Valley Traction Company.

John O. Moran and *H. A. Scandrett* for all other defendants.

R. Walton Moore for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND ATTCHISON.

MEYER, *Commissioner*:

The facts and contentions in this case as stated by the examiner in his proposed report follow. No exceptions were taken to this statement of the facts, but certain of the examiner's proposed conclusions, which will be hereinafter discussed, were excepted to by defendants.

The through rates on class and commodity traffic between points on the Boise Valley Traction Company, an electric traction line operating within the state of Idaho and hereinafter referred to as the traction line, and all interstate points are the aggregates of the intermediate rates to and from Boise, Caldwell, Nampa, Meridian, or Middleton, junction points of the traction line and the Oregon Short Line Railroad, hereinafter referred to as the short line. The local rates per 100 pounds of the traction line from and to its junctions with the short line, which are added to the rates of the short line to make the through rates, range from 10 cents to 22 cents on first class, to from 3 cents to 6 cents on class E, and from 3 cents to 7 cents on fresh fruit, carloads, the latter being the principal outbound freight of the traction line. The petition in this case, filed by 26 individuals and concerns engaged in raising fruit, stock, and farm products along the traction line, attacks the combination through rates referred to from and to representative market cities throughout the country as "un-

just, unreasonable, excessive, preferential, and discriminatory." We are asked to require defendants to establish joint through rates less than the aggregates of the intermediate rates.

The traction line, including branches and side tracks, is about 80 miles in length and extends from Boise along the north bank of the Boise River to a point opposite Caldwell, where it crosses the river, thence parallels the main line and the Boise branch of the short line to a point opposite Boise where it again crosses the river, thus making a loop. The greatest cross-country distance between the traction line and the short line is not more than 10 miles, but, as above indicated, the Boise River flows between the north division of the traction line and the short line. What is known as the Idaho Northern branch of the latter line, however, connects with the northern division of the traction line at Middleton. Prior to September 1, 1916, there were no through routes in effect between the traction line and the short line and its connections. Shippers were required to rebill and rehandle their freight at the junction points of the two lines. On the above date through routes were established, and shipments have since been handled on through bills of lading. No issue is therefore presented here as to the propriety of our requiring the establishment of such through routes. We are concerned only with the alleged unreasonableness and discriminatory character of the combination rates applied via the through routes voluntarily established and now in effect.

At the hearing no evidence was presented by complainants in respect to the class rates. Practically all of their testimony related to the commodity rates on fruit from points on the traction line to eastern destinations. Some specific reference was made to the rates on coal from mines in Wyoming and Utah on the short line to points on the traction line. The only contention made against the reasonableness *per se* of the rates on fruit is that they are constructed by full combination on the junction points.

For many years the Boise River Valley, especially that part lying in Ada and Canyon counties, has been quite an extensive producer of apples and prunes. During the year 1915, 902 cars, of which 302 originated on the traction line and 600 on the short line, were shipped out of these two counties. In 1916 the crop was a total failure. Three of the complainants presented exhibits showing that during the year 1915 the net proceeds from their apple and prune crops did not yield what they considered a fair return on their investment. One witness testified that many of the old prune orchards are being torn up and that no new orchards are being planted. Another stated that if the arbitraries which the growers along the traction line must pay over the short-line rates are not wiped out the fruit industry local to this line will fail.

The apples and prunes produced along the traction line are shipped largely to defined territories, Colorado common points and east. In disposing of their products in the eastern markets, complainants come into active competition with fruit growers along the short line in Idaho and Utah, especially growers located in the Boise River, Weiser River, and Payette River valleys. At the present time the rates on fruits including apples and prunes are blanketed from all points on the short line west of Pocatello, including points on several intermediate branch lines, a territory extending over 300 miles east and west and 100 miles north and south, or an area of 30,000 square miles. The principal intermediate branch lines and the distances from the terminus of each to its junction with the main line are as follows: Boise branch, 20 miles; Payette branch, 30 miles; Hill City branch, 73 miles; Ketchum branch, 69 miles; Buhl branch, 74 miles. The blanket embraces each of these branch lines. The Idaho Northern branch, 129 miles in length, is also intermediate, but the blanket on this branch extends only to Emmett, which is 20 miles from the main line and the limit of the fruit-producing section. The distance from the first station west of Pocatello to the western terminus of the short line at Huntington, Oreg., is 327 miles. The greatest distance from any point on the traction line to Nampa or Caldwell, its junction with the main line of the short line, is about 25 miles. The distance from Huntington is over 50 miles greater than the most distant point on the traction line, to eastern destinations.

The rates on fruit from points on the short line in Idaho to eastern destinations were formerly higher than the rates from Utah common points to the same destinations, but in 1916 the rates from the latter points were extended to apply from the Idaho points to all destinations east of Colorado common points. This action was taken in order to put the fruit growers located in Idaho on a parity in eastern consuming markets with those located in Utah. The present Payette and Idaho Northern branches of the short line were formerly independent lines. Prior to their acquisition by the short line the through rates on fruit from points on those lines to eastern destinations were made in the same manner as the through rates from points on the traction line, namely, by combination on the junctions with the short line. After their acquisition by the short line the blanket basis of rates was extended to apply from the fruit-shipping points on those lines. A witness for the short line admitted that if the traction line were part of the short line the blanket rates would also be applied from points on the traction line. The record shows that the short line applies the blanket basis of rates from points in Utah on the Los Angeles & Salt Lake Railroad, the Ogden, Logan & Idaho Railroad, the Salt Lake & Utah Railway, and the Salt Lake & Ogden

Electric Railway, the latter being, as its name indicates, an electric traction line. It was testified on behalf of the short line that this extension of the blanket was made to meet the competition of the Denver & Rio Grande Railroad, which has lines traversing the territory served by the lines named. The Denver & Rio Grande Railroad has no joint rates with any of those lines except the Ogden, Logan & Idaho Railroad, and a witness for the short line admitted that his line had an understanding with two of the other lines to the effect that they would make no joint rates with the Denver & Rio Grande Railroad, and that all the fruit traffic originated by them would be turned over to the short line. It also appears that the cross-country distance between those lines and the Denver & Rio Grande Railroad is about as great as that between the traction line and the short line, and three witnesses for complainants testified that long wagon hauls damaged the fruit for market purposes. Complainants patronize the traction line and pay its local rates to the junctions with the short line rather than wagon-haul their fruit to stations on the short line. A witness for the short line admitted that the same damage would result if fruit growers along the Utah lines named above wagon-hauled their products to stations on the Denver & Rio Grande Railroad. The same witness also admitted that the general intention of his company was to apply the blanket rates from the fruit-producing section "wherever it is."

The traction line is in a precarious financial condition. During the year 1916 its fixed charges exceeded its net operating earnings by more than \$15,000. It is now delinquent in the interest due on \$750,000 of mortgage notes, and it also owes about \$20,000 for paving taxes in the city of Boise. It therefore contends in this case that it can not stand any reduction in revenue.

The short line, the only other defendant represented at the hearing, contends that as the petition alleges that the present prune rates are "preferential and discriminatory," and as the act prohibits only *undue* or *unreasonable* preferences and *unjust* discrimination, there is no third section issue before us.

The examiner's findings were:

1. That there was not sufficient testimony of record to warrant any finding with respect to the rates on coal from mines in Wyoming and Utah on the Oregon Short Line to points on the traction line.

2. That no consideration need be given to the precarious financial condition of the traction line inasmuch as "the local rates of the traction line, the proportions which it receives out of the through rates, are not in issue."

3. That the defendant's contention that there is no third section issue before us was more or less technical and therefore unsound.

4. That the through rates on fruit, in carloads, from points on the traction line to points in defined territories, Colorado common points and east, are not unreasonable, but that they subject complainants to undue prejudice and disadvantage to the extent that they exceed the rates from Boise, Idaho, via the Oregon Short Line to the same destinations.

The first two findings above referred to need little comment. There was no objection to the first, and as to the second defendants merely stated that they "disagree altogether with the conclusion of the attorney examiner that the financial condition of the traction company has no bearing on this case." Both proposed findings are sound and are adopted.

The defendants urged the point that the examiner erred in finding that the petition tendered an issue of unjust discrimination. They cite cases where the Commission has made the observation that preferences and prejudices are not prohibited unless they are undue, and point out that the complaint merely alleged that the rates in question are "unjust, unreasonable, excessive, preferential and discriminatory." It may also be added that the complaint prayed "that said rates be made reasonable and the discrimination cease, and that said through and joint rates be made in accordance with the rates and charges established and maintained in other localities similarly situated." The prayer of the complaint concluded with the request that the rates to be established be made less than the sum of the locals.

We agree with the examiner that the position taken by the defendants is technical and insupportable. Preference and discrimination were alleged, the removal of which might be effected, the complaint indicates, by the prescription of rates made in accordance with rates maintained in other localities similarly situated. If the defendants did not consider themselves on sufficient notice as to what points or localities were alleged to be receiving a preference, they might have called for further particulars. Furthermore, as the examiner pointed out in his proposed report, no objection was made by defendants when testimony was adduced tending to show undue preference, which testimony will be discussed in the following paragraph.

As the foregoing statement of facts indicates, the Oregon Short Line extends the blanket basis of rates to connecting lines owned or controlled by it as well as to the Ogden, Logan & Idaho Railroad, the Salt Lake & Utah Railway, and the Salt Lake & Ogden Electric Railway, the latter three being independently operated. Defendants' witness testified that the extension of this blanket to points on the Ogden, Logan & Idaho Railroad was forced, inasmuch as the Denver & Rio Grande had a similar arrangement with this short line. With reference to the Salt Lake & Utah and Salt Lake & Ogden electric

railways, however, the Denver & Rio Grande not only has no joint rates with these lines but is apparently precluded from securing any traffic originating thereon by reason of an understanding reached by and between these short lines and the Oregon Short Line to the effect that upon the present basis of divisions all such traffic will be turned over to the Oregon Short Line. Furthermore, to repeat a fact already stated, the rates on fruit are blanketed for a territory extending over 300 miles east and west and 100 miles north and south, or an area of 30,000 square miles. With no apparent difference in transportation conditions attending the two hauls, a grower of fruit located on a branch line within the blanket owned by the Oregon Short Line would get the rate from the junction point while a grower on the traction line here before us would be compelled to pay the combination of locals. The only fact depriving the shipper on the traction line of a lower basis is one of ownership; and it was testified by one of the carriers' witnesses that the blanket basis would be accorded complainants if the Oregon Short Line were to acquire the traction company. We see little justice in an adjustment of this kind and are inclined to support the examiner's finding that the application of the combination of locals to points on the traction line results in charges that are unduly prejudicial to complainants. With the exception of a different commodity, we had practically the same situation before us in *Ladd & Co. v. Gould Southwestern Ry. Co.*, 36 I. C. C., 179, and the same conclusion as was reached in that case, as well as in *McGowan-Foshee Lumber Co. v. F. A. & G. R. R. Co.*, 43 I. C. C., 581, applies with equal force here. We shall, however, except from the terms of our order Boise, Caldwell, Nampa, Meridian, and Middleton, Idaho, which points are reached directly by the tracks of the Oregon Short Line.

In reaching our finding of undue prejudice we have considered the fact that perhaps half of the traction line is paralleled to the tracks of the Oregon Short Line and the Boise branch thereof, as we have also observed that the tracks of the Salt Lake & Ogden Electric Railway parallel the tracks of the Oregon Short Line between Salt Lake City and Ogden. And in connection with defendant's statement that the Oregon Short Line and the traction line are highly competitive, we think that so far as our conclusion here is concerned this proceeding would not have been brought if the complainants could have availed themselves of the lower rates open to them had they been able to turn the traffic over to the Oregon Short Line in the first instance instead of to the traction company. Moreover, as is stated in the examiner's report, the testimony is to the effect that the susceptibility of this fruit to damage if it is wagon hauled induces complainants to patronize the traction line and pay the two rates

rather than risk hauling it to the nearest station on the Oregon Short Line.

With the exception of the traction line all of the defendants herein are under federal control. On October 28, 1918, we entered an order permitting an amendment of the complaint making the Director General of Railroads a party defendant. On December 4, 1918, the Director General filed his answer to the amended complaint in which he made no demand for further hearing and consented that in so far as it is relevant the evidence submitted may be considered by us in determining the justness and reasonableness of rates initiated by him.

Effective June 25, 1918, defendants' rates on fruit in carloads to the destinations involved from junction points with the traction line and from all of the blanketed territory to which reference has been made were increased 25 per cent. The rates for transportation from local points on the traction line to junction points with the Oregon Short Line have remained unchanged. However, on December 10, 1918, pursuant to an application by the traction line, we entered our Fifteenth Section Order No. 999 giving the traction line permission to increase these rates not to exceed 25 per cent. Under rates now in effect and under rates increased in accordance with the above order, complainants are and for the future will be subjected to undue prejudice in a degree fully as great as under the rates in effect at the time this complaint was brought, to remove which an appropriate order will be entered.

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No. 9882.

AMERICAN WINDOW GLASS COMPANY

v.

WESTERN MARYLAND RAILWAY COMPANY ET AL.

Submitted October 4, 1918. Decided November 23, 1918.

On September 4, 1917, complaint was made that the rates on glass sand, in carloads, from Hancock, W. Va., to four points easterly of Pittsburgh, Pa., were unjust, unreasonable, and unduly prejudicial as compared with the rates from the same district to Pittsburgh and points westerly thereof. Supplemental complaint was filed making the Director General of Railroads a party defendant, who, in his answer, consented to the consideration by the Commission of the relevant parts of the original record and waived further hearing; *Held*:

1. *Willamette Valley Lumbermen's Asso. v. S. P. Co.*, 51 I. C. C., 250, cited and followed with respect to the Commission's powers over rates initiated under the federal control act.
2. The present rates complained of herein are and for the future will be relatively unjust, unreasonable, and unduly prejudicial in violation of the federal control act and the act to regulate commerce. Just, reasonable, and nonprejudicial rates prescribed for the future.
3. The rates charged on complainant's shipments which moved during the period from September 4, 1915, to January 1, 1918, were unjust and unreasonable in violation of the act to regulate commerce and complainant suffered damages as a result thereof. Reparation awarded.

Richard Townsend for complainant.

Charles R. Webber and *William Ainsworth Parker* for defendants.

R. Walton Moore for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

This case brings into review the rates on glass sand, in carloads, from four producing points on and near the Potomac River boundary line between the states of Maryland and West Virginia to four glass-manufacturing points easterly and southerly of Pittsburgh in the state of Pennsylvania. Two of the producing points, Hancock and Berkeley Springs, W. Va., are served by the Baltimore & Ohio Railroad; the other two, Tonoloway and Round Top, Md., by the Western Maryland Railway. Three of the manufacturing points, Jeannette, New Kensington, and Monongahela City, are located on the Pennsyl-

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vania Railroad; the fourth, Belle Vernon, on the Pittsburgh & Lake Erie. The manufacturing points will be hereinafter referred to as the east-of-Pittsburgh points. Westerly of Pittsburgh are numerous other glass-manufacturing points located on the above-named and other lines. These latter manufacturing points, which are generally speaking farther distant from the producing points mentioned than are the east-of-Pittsburgh points, will be hereinafter referred to as the west-of-Pittsburgh points. The Baltimore & Ohio and its connections maintain joint through rates on glass sand from Hancock and Berkeley Springs to all the manufacturing points referred to, the rates to the east-of-Pittsburgh points being higher than the rates to the west-of-Pittsburgh points. The Western Maryland, in connection with the Pittsburgh & Lake Erie, maintains joint through rates from Tonoloway and Round Top to the west-of-Pittsburgh points on the latter line, and to Belle Vernon of the east-of-Pittsburgh points. The complaint herein, filed by a corporation engaged in the manufacture of window glass at each of the four east-of-Pittsburgh points, alleges that the joint through rates thereto from the producing points are unjust and unreasonable in violation of section 1, and unjustly discriminatory and unduly prejudicial in violation of sections 2 and 3 as compared with the rates to Pittsburgh and the west-of-Pittsburgh points. It also attacks the failure of the Western Maryland and Pennsylvania lines to maintain joint through rates from Tonoloway and Round Top to Jeannette, New Kensington, and Monongahela City. The prayer of the petition is that just, reasonable, and non-discriminatory rates be established for the future, and that reparation be awarded on past shipments. Except where otherwise indicated, the rates hereinafter given are those which were in effect at the time of the hearing. To show the relative locations of the points involved, a map is inserted.

There is a large vein of sand, known as the Oriskany measure, extending from Oriskany Falls, N. Y., southwesterly through the states of Pennsylvania and Maryland into the state of West Virginia. The sand found at the four producing points above referred to is of this measure. In its production a quarrying operation is employed at most places, the sand being quarried, crushed, screened, and sometimes washed before loading into the cars. In other places it is washed down from the bank over a screen. It is generally of two grades, No. 1 and No. 2. From a geological standpoint there is very little difference in the two grades, both analyzing from 99.4 to 99.6 per cent of silica. The No. 1 grade is white; the No. 2 is a little darker and is shipped dry or damp. The present value of the small quantity of the No. 1 produced is about \$2.50 per ton; that of the No. 2 is \$1.25 for the damp and about \$1.60 for the

dry. Both grades are shipped in ordinary box cars, and can be loaded to 10 per cent above the marked capacity of the car. The actual average loading is close to 40 tons per car. The loading and unloading is performed expeditiously; the movement is steady throughout the year. Claims for loss are few and unimportant.

Complainant uses about $8\frac{1}{2}$ cars of sand per day at its four plants. Up to about 1915 it obtained sand from its own sand bank near Derry, Pa., but that supply was exhausted and it began purchasing from a company operating in the Hancock district and also in a district near Mapleton, Pa., on the Pennsylvania Railroad. So far, the shipments from the Hancock district have gone largely to the Belle Vernon plant. During three representative months in 1916 and 1917 that plant received 174 cars of sand and other mate-

rials and shipped out 196 cars of glass, 165 cars of which went to points in official classification territory. The preponderance of the empty movement of box cars on the lines serving the Hancock district appears to be westbound; the cars loaded with sand to complainant's plants are therefore cars which would probably move empty but for the sand movement here in question. All of complainant's plants are conveniently located on the rails of the delivering line-haul carriers. Under the circumstances, the movement of sand to complainant's plants must be considered attractive business from a transportation standpoint.

The subjoined table, compiled largely from exhibits filed by complainant, shows the distances, rates, and ton-mile earnings from the Hancock district to the east-of-Pittsburgh points, and also to Pitts-

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burgh and the west-of-Pittsburgh points with which comparisons were made to demonstrate the alleged unreasonableness and prejudicial character of the rates in issue:

To—	Hancock via B. & O.			Hancock via Western Maryland.			Steiner, Mich.		
	Miles.	Rates per ton.	Ton-mile earnings.	Miles.	Rates per ton.	Ton-mile earnings.	Miles.	Rates per ton.	Ton-mile earnings.
East-of-Pittsburgh points:			<i>Mills.</i>			<i>Mills.</i>			<i>Mills.</i>
Jeannette, Pa.....	177	\$1.62	9.14	169	.....¹	10.18	316	\$1.48	4.69
New Kensington, Pa....	213	1.62	7.45	191	.....¹	8.14	307	1.48	4.82
Monongahela City, Pa....	199	1.62	8.88	205	.....¹	9.87	320	1.48	4.63
Belle Vernon, Pa.....	229	1.48	6.52	211	\$1.48	7.36	331	1.48	4.47
West-of-Pittsburgh points referred to in complaint:									
Rochester, Pa.....	231	1.32	5.71	.....	.....	.....	263	1.48	5.62
Carnegie, Pa.....	214	1.32	6.17	.....	.....	.....	291	1.48	5.08
Bridgeville, Pa.....	218	1.32	6.05	.....	.....	.....	.....	.....	.....
Steubenville, Ohio.....	248	1.32	5.31	.....	.....	.....	252	1.26	5.00
Wheeling, W. Va.....	256	1.32	5.15	.....	.....	.....	275	1.26	4.58
Coraopolis, Pa.....	217	1.32	6.08	210	1.32	6.29	278	1.48	5.32
Groveton, Pa.....	215	1.32	6.14	208	1.32	6.34	.....	.....	.....
Monaca, Pa.....	231	1.32	5.72	224	1.32	5.89	264	1.48	5.60
Pittsburgh, Pa.....	205	1.32	6.43	198	1.16	5.86	289	1.48	5.12
Other glass-manufacturing points with which comparisons are made:									
Glassport, Pa.....	204	1.32	6.47	176	1.16	6.59	292	1.48	5.07
Beaver Falls, Pa.....	236	1.32	5.59	218	1.32	6.05	259	1.48	5.71
Washington, Pa.....	230	1.32	5.72	.....	.....	.....	307	1.48	4.82
Charleston, W. Va.....	347	1.68	4.84	.....	.....	.....	321	1.48	4.60
Clarksburg, W. Va.....	179	1.26	7.43	.....	.....	.....	348	2.00	5.75
Kane, Pa.....	362	1.68	4.64	.....	.....	.....	.....	.....	.....
Akron, Ohio.....	.....	.....	.....	.....	.....	.....	189	1.05	5.55
Cleveland, Ohio.....	.....	.....	.....	.....	.....	.....	142	.89	6.26
Cincinnati, Ohio.....	.....	.....	.....	.....	.....	.....	231	1.16	5.04

¹ On basis of a rate of \$1.62.

The above table shows that the rate from Hancock to Jeannette, New Kensington, and Monongahela City was 30 cents per ton, and to Belle Vernon 16 cents per ton, greater than the rate to the west-of-Pittsburgh points. When the complaint was filed the rate to Monongahela City was \$2.96 per ton, but it was reduced to \$1.62 per ton on September 9, 1917. The rate to Jeannette and New Kensington was formerly \$1.74 per ton, but it was reduced to \$1.62 per ton on November 20, 1915, the same date on which the rate to Steubenville was reduced from \$1.74 to \$1.32 per ton. The Western Maryland has no prorating arrangements with the Pennsylvania lines and consequently does not publish joint through rates to points on those lines. Negotiations are now under way, however, to put such rates into effect, so that there is no opposition here to complainant's request for joint through rates from Tonoloway and Round Top to Jeannette, New Kensington, and Monongahela City.

By way of justification for the present adjustment, defendants contended (a) that the hauls to the east-of-Pittsburgh points are two-line hauls, (b) that the west-of-Pittsburgh points are all located in

so-called 60 per cent territory, (c) that the rate from the Mapleton district on the Pennsylvania Railroad is the same to the west-of-Pittsburgh points as to Pittsburgh, and that the Baltimore & Ohio simply meets that adjustment from the Hancock district, and (d) that the rates from the Hancock district to Pittsburgh and the west-of-Pittsburgh points are held down by the rates from the Steiner-Rockwood, Mich., district. In respect to these grounds the record shows (a) that the rate of \$1.32 per ton to the west-of-Pittsburgh points also applies to many points requiring two-line hauls, (b) that the east-of-Pittsburgh points are also located in so-called 60 per cent territory, (c) that the rate from the Mapleton district to the east-of-Pittsburgh points is also the same as that to Pittsburgh, and (d) that the rate from Steiner, Mich., to the east-of-Pittsburgh points is the same as that to all the west-of-Pittsburgh points except two. Furthermore, the table shows that the general rate from Steiner to the west-of-Pittsburgh points is 16 cents greater than the general rate from the Hancock district to the same points. It also shows that, while the rate from Steiner to Charleston, W. Va., is 20 cents less than that from Hancock, the rate from Hancock to Clarksburg, W. Va., is 74 cents less than that from Steiner. These facts, in the light of admissions by defendants' witnesses that they did not know whether there was a movement of sand from the Steiner district to the west-of-Pittsburgh points, indicate that the rates from that district had little or nothing to do with setting the level of the rates from the Hancock district.

As additional evidence of the alleged unreasonableness of the rates attacked, complainant submitted numerous comparisons (a) with the rates on engine sand, molding sand, and building sand, from and to the same and other points, (b) with the rates on fluxing limestone from Martinsburg, W. Va., Thomasville, Pa., and Bellefonte, Pa., to the same points, and (c) with the average ton-mile and car-mile earnings derived from all freight by all lines in the eastern district. It is not deemed necessary to analyze these exhibits in detail. The rates on engine sand, molding sand, and building sand are lower than the rates on glass sand to a few scattered points in this territory but, as they appear to be predicated on a principle of rate making which we have repeatedly held to be unlawful, viz, the use to which the commodity is put, it would not be proper to accept them as standards of reasonableness for the rates in issue. The rates on fluxing limestone from the producing points mentioned are not constructed upon any uniform or consistent basis, and for that and other reasons appearing of record, they can not be regarded as safe criteria for reasonable rates on sand. And the comparisons between the ton-mile and car-mile earnings from the rates in issue

with the ton-mile and car-mile earnings from all freight are subject to so many criticisms that little weight can be given to them in this case.

The petition attacks the rates charged on past shipments on the single ground that they were unjust and unreasonable under section 1. The shipments on which reparation is claimed were purchased from a company operating in both the Hancock district and the Mapleton district. Throughout the period covered by these shipments the rate from the Mapleton district to the east-of-Pittsburgh points, except Belle Vernon, was less than that from the Hancock district; the rate to Belle Vernon was the same from the two districts. The price of sand, however, was the same in both districts. On account of a shortage of cars and for other reasons, the producing company could not supply complainant's demands from the Mapleton district, and complainant was compelled to take some sand from the Hancock district and pay the additional freight thereon. Most of this sand moved to its Belle Vernon plant, the rate to which from the Hancock district was less than that to the other plants. The record shows that complainant purchased the sand f. o. b. point of shipment, and paid and bore all of the freight charges thereon. A witness for complainant testified that the same conditions existed throughout the period covered by the shipments, and the tariffs indicate that the various rates with which comparisons were made to prove the alleged unreasonableness of the rates in issue remained practically unchanged during that period.

MEYER, Commissioner:

After making substantially the foregoing statement of issues and facts, the examiner who heard the case proposed the following conclusions:

1. That the rates on glass sand, in carloads, from Hancock and Berkeley Springs, W. Va., to the four east-of-Pittsburgh points in question are unjust, unreasonable, and unduly prejudicial to the extent that they exceed \$1.26 per ton to Jeannette and Monongahela City, and \$1.32 per ton to New Kensington and Belle Vernon, the latter being the rate to Pittsburgh.

2. That the Western Maryland and Pennsylvania railroads establish joint through rates from Round Top and Tonoloway, Md., to the four east-of-Pittsburgh points on the above basis.

3. That the charges collected on complainant's shipments which moved within the statutory period from the Hancock district to its plants in the four east-of-Pittsburgh points were unjust and unreasonable and that complainant was damaged to the extent that such charges exceeded charges which would have accrued on basis of the proposed rates named in paragraph 1 hereof.

4. That an order prescribing the above rates for the future should be entered, and upon receipt of a statement of complainant's shipments an award of reparation should be made.

Defendants filed exceptions to the examiner's report, which was dated March 23, 1918. On March 21, 1918, the federal control act was passed. On April 26, 1918, the rates involved herein were increased 15 per cent in accordance with a supplemental permissive order entered in *The Fifteen Per Cent Case*, 45 I. C. C., 303, and on May 25, 1918, the Director General promulgated his General Order No. 28, making an increase of 25 per cent in rates which, as regards the rates here in issue, became effective June 25, 1918.

On September 19, 1918, the Commission entered an order permitting a supplemental complaint to be filed and making the Director General a party defendant. On September 28, 1918, the Director General filed his answer stating, among other things, that—

Since the filing of the original complaint herein, there was made his General Order No. 28, and he avers it is therein by him found and certified to this Commission that in order to defray the expenses of federal control and operation fairly chargeable to railway operating expenses and also to pay railway tax accruals other than war taxes, net rents for joint facilities and equipment, and compensation to the carriers operating as a unit, it was necessary to increase the railway operating revenue, also that in his opinion the public interest required a general advance in freight rates, passenger fares, and baggage charges as therein provided; and he further avers that all rates as now in force and complained of herein have been established pursuant to and in accordance with said order.

And further that—

He does not demand further hearing of evidence in this case, and consents that, in so far as it is relevant, the evidence heretofore submitted may be considered by the Commission in determining the questions now properly at issue.

Thereupon the case was set for oral argument on October 4, 1918.

At the argument defendants abandoned the position taken by them at the original hearing and in their briefs and exceptions to the examiner's report, and offered to reduce the rates on glass sand, in carloads, from the Hancock district to the four east-of-Pittsburgh points—viz, Jeannette, New Kensington, Monongahela City, and Belle Vernon—to the basis of the rate to Pittsburgh, which is now \$1.70 per net ton, but contended that, as the present rates were promulgated by the Director General, the Commission could make no order for the future on the present record.

A similar contention was made in *Willamette Valley Lumbermen's Assn. v. S. P. Co.*, 51 I. C. C., 250, in which case we discussed our powers with respect to rates initiated by the President through the Director General. In that case, as in the instant case, the Director

General was made a party defendant by the filing of a supplemental complaint, but demanded no further hearing. We found that the evidence of record was sufficient for a determination of the issues presented with regard to rates initiated by the President, and among other things, said, at page 258 of the report:

Rates made by the President must be reasonable in and of themselves and they must be relatively just in view of all the conditions enumerated in the control act and in view of other circumstances and conditions.

The recommendation of the examiner that lower rates on glass sand, in carloads, be established from the Hancock district to Jeannette and Monongahela City than to New Kensington and Belle Vernon was based primarily upon the shorter distances from Hancock to the two first named than to the two latter destinations. The distances used by the examiner were, as the report states, taken from an exhibit filed by complainant. These distances and the routing used in figuring them were not criticized by defendants either at the hearing or in their briefs and exceptions. At the oral argument, however, defendants stated that some of the distances had been figured via the wrong junction points and were in error, and that based on the correct distances there was no foundation for lower rates to Jeannette and Monongahela City than to New Kensington and Belle Vernon. New statements of distances were invited from complainant and defendants from which the following may be stated as accurate distances:

Distances from Hancock to—	Via Baltimore & Ohio.	Via Western Maryland.
	Miles.	Miles.
Jeannette.....	177	169
Monongahela City.....	199	205
New Kensington.....	213	191
Belle Vernon.....	229	211
Pittsburgh.....	205	198

Upon consideration of all the facts of record, including the certificate of the Director General and the fact that the carriers are being operated under a unified and coordinated national control, we find that the present rates on glass sand, in carloads, via the lines of defendants, from Hancock and Berkeley Springs, W. Va., and Tonoloway and Round Top, Md., to Jeannette, Monongahela City, New Kensington, and Belle Vernon, Pa., are, and for the future will be, unjust, unreasonable, and in violation of the federal control act and the act to regulate commerce to the extent that they exceed the rates contemporaneously maintained to Pittsburgh. An order prescribing this rate for the future will be entered.

Complainant asks for reparation on all shipments which have moved subsequent to September 4, 1915. In a letter to the Commission, dated October 11, 1918, complainant waives reparation on all shipments which have moved subsequent to January 1, 1918.

Upon consideration of all the facts of record pertaining to the rates in effect between September 4, 1915, and January 1, 1918, we find that the charges collected from complainant on shipments of glass sand, in carloads, which moved via the lines of the original defendants during the above period from Hancock and Berkeley Springs, W. Va., and Tonoloway and Round Top, Md., to Jeannette, Monongahela City, New Kensington, and Belle Vernon, Pa., were unjust, unreasonable, and in violation of the act to regulate commerce, and that complainant has suffered damages to the extent that such charges exceeded charges on basis of the rate of \$1.32 per ton, then in effect to Pittsburgh and the west-of-Pittsburgh points. Upon receipt of a statement of complainant's shipments, prepared and verified in accordance with rule V of the Rules of Practice, an award of reparation will be made against the original defendants.

51 I. C. C.

No. 7616.¹

HEIDER MANUFACTURING COMPANY

v.

CHICAGO GREAT WESTERN RAILROAD COMPANY.

Submitted May 13, 1916. Decided December 4, 1918.

1. Joint and combination through rates made on specific bases applicable on various commodities from certain points in eastern, southern, and central states to certain destinations in Iowa found to have been unreasonable and, where unprotected by fourth section applications, otherwise unlawful. Reparation awarded.
2. Rates assailed not shown to have been unreasonable except where in excess of the lowest aggregate of intermediate rates.
3. Fourth section applications seeking authority to continue through rates on various commodities from specified interstate points to destinations in Iowa which exceed the aggregates of the intermediate rates subject to the act to regulate commerce denied.

¹ The report also embraces No. 7616 (Sub-No. 1), Same v. Same; No. 7953, Hardsoc Manufacturing Company et al. v. Nashville, Chattanooga & St. Louis Railway et al.; No. 8002, F. Brody & Sons Company v. Seaboard Air Line Railway et al.; No. 8002 (Sub-No. 1), Des Moines Tent & Awning Company et al. v. Flint River & North-Eastern Railroad Company et al.; No. 8002 (Sub-No. 2), L. Harbach's Sons Company et al. v. Southern Railway Company et al.; No. 8002 (Sub-No. 3), D. I. Brody Company v. Durham & Southern Railway Company et al.; No. 8002 (Sub-No. 4), Schmitt & Henry Manufacturing Company v. Southern Railway Company et al.; No. 8077, Mulronev Manufacturing Company v. Louisville & Nashville Railroad Company et al.; No. 8098, Maytag Company v. Central of Georgia Railway Company et al.; No. 8097, Hanna Manufacturing Company v. Southern Railway Company et al.; No. 8097 (Sub-No. 1), Hanna Manufacturing Company v. Boston & Albany Railroad Company et al.; No. 8115, Fairfield Glove & Mitten Company v. Atlantic Coast Line Railroad Company et al.; No. 8115 (Sub-No. 1), Fairfield Glove & Mitten Company v. Boston & Maine Railroad et al.; No. 7906, Hanna Manufacturing Company v. Central Vermont Railway Company et al.; No. 7929, Pilcher Hardware Company v. Pittsburgh & Lake Erie Railroad Company et al.; No. 7955, Peterson Manufacturing Company v. Boston & Albany Railroad Company et al.; No. 7975, Thomas D. Murphy Company v. Chicago, Burlington & Quincy Railroad Company; No. 7756, Zimmerman Steel Company v. Chicago, Milwaukee & St. Paul Railway Company et al.; No. 7622, Crystal Carbonating Company v. Michigan Central Railroad Company et al.; No. 7581, Waterloo Cement Machinery Corporation v. Illinois Central Railroad Company et al.; No. 7816, Waterloo Saddlery Company v. Baltimore & Ohio Southwestern Railroad Company et al.; No. 7872, Herrick Refrigerator & Cold Storage Company et al. v. Chicago & North Western Railway Company et al.; No. 7990, American Pearl Button Company v. Illinois Central Railroad Company et al.; No. 7579, Storm Lake Tub & Tank Factory v. Indiana Harbor Belt Railroad Company et al.; No. 7755, Reliance Brick & Tile Company v. Illinois Central Railroad Company et al.; No. 8003, American Pearl Button Company v. Chicago, Burlington & Quincy Railroad Company; No. 7991, American Pearl Button Company v. Nashville, Chattanooga & St. Louis Railway et al.; No. 8600, Clinton Bridge Works v. Chicago & North Western Railway Company et al.; and Portions of Fourth Section Applications Nos. 221, 222, 459, 703, 704, 1019, 1047, 1530, 1531, 1547, 1561, 1573, 1576, 1771, 1952, 2045, 2060, 3596, 3786, 3965, 4671, and 4966.

F. W. Knoche for complainants.

George M. Stephen for Clinton Bridge Works.

A. P. Humburg, W. F. Dickinson, W. T. Hughes, R. B. Scott, Kenneth F. Burgess, C. C. Wright, Robert H. Widdicombe, F. S. Hollands, R. B. Alberson, G. B. Winston, J. G. Morrison, Fred P. Carr, R. C. Fyfe, R. G. Brown, Lloyd Jodon, J. H. Cherry, and A. F. Cleveland for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HARLAN, AND HALL.

BY DIVISION 3:

These cases present the same general issues and will be disposed of in one report. The complainants, corporations, partnerships, and individuals, allege by complaints filed December 7, 1914, and on later dates, that the rates charged on carload and less-than-carload shipments of various commodities forwarded from certain interstate points to points in Iowa were unreasonable and in violation of the fourth section of the act in that they exceeded the aggregate of the intermediate rates. Unjust discrimination and undue prejudice were also alleged in some of the complaints, but these allegations were not sufficiently developed of record and will not be considered. The claims were seasonably filed, except on one shipment in No. 7581 delivered January 21, 1911, and the charges apparently collected on that date. Because of abandonment of claims, or failure of complainants to show that they paid and bore the freight charges, the following shipments will not be considered: In No. 8077, cotton piece goods from Pell City, Ala., to Fort Dodge, Iowa; in No. 8002, cotton piece goods from Greensboro and Glen Raven, N. C., Columbus, Ga., and Pell City to Des Moines, Iowa; in No. 8002, Sub-No. 2, cotton piece goods from Rock Hill, S. C., to Des Moines, consigned to L. Harbach's Sons Company; and in No. 7622, an automobile from Lansing, Mich., to Mason City, Iowa. Rates are stated in cents per 100 pounds except as otherwise noted.

The shipments consisted of cotton piece goods in less than carloads from points in southern and New England territories, and various other commodities in carloads and less than carloads from central freight association territory, Monessen, Pa., St. Paul, Minn., Milwaukee and South Milwaukee, Wis., and Nashville, Tenn. On the shipments of cotton piece goods from the points in the south and on the shipments from St. Paul charges were collected on the basis of joint commodity rates which in each instance exceeded combination rates contemporaneously in effect composed of commodity rates to certain points in Iowa and the Iowa distance rates beyond. On the shipments from New England territory, Monessen, and points in central freight

association territory east of the Indiana-Illinois state line, excepting certain points taking the Chicago, Ill., basis of rates, charges were collected at the combination of proportional rates to and from the east bank of the Mississippi River. On all these shipments, except those from Monessen in No. 7929, from Greenfield, Ohio, in No. 7816, and on certain shipments of cotton piece goods from Ware, Mass., Greenville, N. H., and Biddeford, Me., in No. 8097, Sub-No. 1, hereinafter referred to, the rates charged exceeded the aggregates of the intermediate rates, composed of joint rates to points on the west bank of the Mississippi River in Iowa and the Iowa distance rates beyond. On the Monessen shipment, the component charged west of the Mississippi River exceeded the aggregate of the intermediate rates composed of a proportional rate from the east bank of the Mississippi River to Marshalltown, Iowa, and the Iowa distance rate beyond. In most instances the combination of proportional rates charged was specifically authorized by the tariffs as the basis for through rates. On less-than-carload shipments from points west of the Indiana-Illinois state line through class rates, governed by the western classification, were applied. These rates exceeded the aggregates of the intermediate rates, governed by the Illinois classification to the Mississippi River crossings and the Iowa classification and distance scale rates beyond. On carload shipments from Chicago and adjacent territory and points west of the Indiana-Illinois state line, on which through class or commodity rates were applied, the rates charged exceeded the commodity rates to points in Iowa and the Iowa distance rates beyond.

The following table shows the points of origin, dates of movement, commodities shipped, rates applicable, and the aggregates of the intermediate rates contemporaneously in effect, except as to certain shipments hereinafter separately discussed:

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7975.....	Feb. 27, 1913, to Aug. 30, 1914.....	Chicago, Ill.....	Red Oak, Iowa.....	Book, cover, and printing paper, l. c. l.....	45	Burlington, Iowa.....	41.1
7756.....	Aug. 2, 1913.....	Milwaukee, Wis.....	Lone Tree, Iowa.....	Automobile, l. c. l.....	116	Rock Island, Ill., or Davenport, Iowa.....	57.5
7681.....	Jan. 19, 1911, to Sept. 18, 1912.....	Freeport, Ill.....	Waterloo, Iowa.....	Gas engines, l. c. l.....	60	Dubuque, Iowa.....	45.4
7816.....	Jan. 30 to June 13, 1913.....	Greenfield, Ohio.....	.....do.....	Sweat pads, c. l.....	43	East Dubuque, Ill.....	40.5
7872.....	Oct. 15, 1913, to Nov. 25, 1914....	South Milwaukee, Wis.....	.....do.....	Mineral wool, c. l.....	20	Dubuque, Iowa.....	17.4
7990.....	Aug. 18, 1914.....	Brookport, Ill.....	Washington, Iowa.....	Mussel shells, c. l.....	17	Mediapolis, Iowa.....	14.8
7755.....	Nov. 14 to Nov. 19, 1913.....	Herrin, Ill.....	Belle Plaine, Iowa.....	Slack coal, c. l.....	1220	Clinton, Iowa.....	195
8003.....	July 19, 1913.....	Christopher, Ill.....	.....do.....	.....do.....	1220	.....do.....	195
	Oct. 23, 1911.....	Vicary, Ill.....	Washington, Iowa.....	.....do.....	131	West Burlington, Iowa.....	117
7991.....	July 21 to Aug. 6, 1914.....	Nashville, Tenn.....	.....do.....	Mussel shells, c. l.....	24	Burlington, Iowa.....	20.6
8000.....	Mar. 7, 1915.....	Indiana Harbor, Ind.....	Odebolt, Iowa.....	Steel bars, c. l.....	27	Marshalltown, Iowa.....	24.4
	Mar. 7, 1915.....	.....do.....	Early, Iowa.....	.....do.....	27	.....do.....	25
	Mar. 6, 1915.....	.....do.....	Linn Grove, Iowa.....	.....do.....	27	Gilford, Iowa.....	24.4

1 Per net ton.

In most instances the defendants had on file with us general applications for authority to continue to charge higher through rates than the aggregates of the intermediate rates. These applications were heard with these cases or submitted upon the records made therein. Between the points of origin and destination in Nos. 7906, 7975, 7756, and 8003 the application of higher through rates were unprotected by application and therefore unlawful. The tariffs naming the Iowa distance rates, on file with us, in each instance contained a note, of which the following, published in the tariff filed by the Chicago, Burlington & Quincy Railroad, is typical:

Application on Interstate Traffic.—The distance class rates shown herein may be used on interstate traffic only when no specific class rates have been provided. Distance commodity rates shown herein may be used on interstate traffic only when no specific commodity rates have been provided. These class rates may not be used either by themselves or in combination in preference to any specific class rate, nor may these commodity rates be used either by themselves or in combination in preference to any specific commodity rate.

The defendants urge that the Iowa distance rates are filed with us solely for the purpose of constructing rates to and from points in Iowa for which there are no other bases for making through rates; that the restrictive clause, which is contained in all tariffs publishing the Iowa distance rates on file with us, has the effect of removing those tariffs from our jurisdiction where there is a basis for making through rates on interstate traffic; and that since these rates are not subject to the act to regulate commerce no departures exist from the rule of the fourth section prohibiting the charging of a through rate in excess of the aggregate of the intermediate rates. These contentions are answered in *Herrick Refrigerator & Cold Storage Co. v. C. G. W. R. R. Co.*, 46 I. C. C., 421, in which we said:

The Chicago Great Western observes that by express tariff provisions the Iowa factor above referred to is not to be used either by itself or in combination in preference to a specific class or commodity rate. The tariffs naming these rates, however, are on file with the Commission, and in the absence of a joint rate the combination would be legally applicable. We have heretofore held that a joint rate that exceeds the aggregate of intermediate rates, subject to the act, between the same points over the same route is prima facie unreasonable. *Lindsay Brothers v. B. & O. S. W. R. R. Co.*, 16 I. C. C., 6; *Lafayette Chamber of Commerce v. L. W. R. R. Co.*, 41 I. C. C., 297.

Our conclusions with respect to our power to consider at this time applications filed by carriers for relief from the provisions of the fourth section of the act to regulate commerce are set forth in *Johnston v. A., T. & S. F. Ry. Co.*, 51 I. C. C., 356, decided November 11, 1918, and need not be repeated here.

No substantial evidence was offered for defendants to justify the charging of through rates in excess of the aggregates of the inter-

mediate rates and the applications for fourth section relief will be denied to the extent that they are involved.

We find that the rates assailed, except those hereinafter discussed, were unreasonable to the extent that they exceeded the lowest combinations of intermediate rates legally applicable in the absence of joint rates or combination rates specifically made the bases for through rates, and that the rates assailed in Nos. 7906, 7975, 7756, and 8003 were also unlawful under the fourth section to the extent that they exceeded the lowest combinations of intermediate rates subject to the act contemporaneously in effect.

In No. 7616 a question is raised as to the extent to which the published through rate of 24.5 cents applicable on malleable castings in carloads from St. Paul to Carroll exceeded the aggregate of the intermediate rates based on Moorland. It is not disputed that the Iowa distance rate was 6.6 cents beyond Moorland, but as the tariff from St. Paul to Moorland contains a rate of 17 cents on malleable castings in carloads in one of its sections and a rate of 14 cents on iron and steel castings without restriction in another, it is contended on behalf of the defendant that the 17-cent rate was more specific and would be applicable as a component in constructing a rate to Carroll in the absence of a through rate. The 14-cent rate was not restricted so as to preclude its application on malleable castings and therefore as it was lower than the 17-cent rate it became applicable by virtue of the alternative rule contained in the sectional tariff. We find that the rate assailed from St. Paul to Carroll was unreasonable to the extent that it exceeded the combination rate of 20.6 cents per 100 pounds.

In No. 8097, Sub. 1, charges were assessed on the shipments from Ware, Greenville, and Biddeford at the intermediate rates based on the east-bank Mississippi River crossings. There appears to have been no combination available lower than that charged. In connection with some of these shipments reference is made by complainants to a bridge charge of 5 cents per 100 pounds from the east bank to the west bank of the Mississippi River in an endeavor to construct combination rates lower than those assessed. This charge, however, was not applicable on local traffic between east-bank and west-bank Mississippi River points nor in connection with proportional rates to and from east Mississippi River crossings on trans-Mississippi River traffic.

In No. 8077 charges were collected on a shipment of cotton piece goods alleged to have moved from Canton to Fort Dodge April 19, 1913, at a rate of 92 cents. A joint commodity rate in this amount was applicable on this traffic prior to April 16, 1913, but on that date it was canceled, leaving in effect a combination rate of 80.7

cents, composed of rates of 58 cents to Dubuque and 22.7 cents beyond. It is not clear from the record that the shipment moved after the cancellation of the joint commodity rate. If it moved as alleged it was overcharged 11.3 cents per 100 pounds. We have hereinbefore found the commodity rate of 92 cents from and to these points unreasonable to the extent that it exceeded the aggregate of intermediate rates contemporaneously in effect. If the shipment moved prior to April 16, 1913, complainant is entitled to reparation accordingly.

In No. 7816, in addition to the three shipments set forth in the table herein, a fourth shipment moved in March, 1914, from Greenfield to Waterloo on which charges were collected at the rate of 43 cents. Prior to the movement of this shipment the proportional rate of 23.5 cents from Greenfield to East Dubuque was canceled, leaving a rate of 44.8 cents legally applicable, composed of rates of 33 cents to Dubuque and the Iowa distance rate of 11.8 cents beyond. The shipment was undercharged 1.8 cents per 100 pounds. On April 15, 1915, the proportional rate of 23.5 cents from Greenfield to East Dubuque was reestablished. For defendants it was testified that the former proportional rate to East Dubuque was canceled through error. The complainant's claim is based solely on the misapprehension that the rate charged exceeded the aggregate of the intermediate rates contemporaneously in effect. We find that the rate legally applicable on this shipment is not shown to have been unreasonable.

In No. 7872, in addition to the shipments of mineral wool which moved from South Milwaukee to Waterloo, Iowa, during the period between October 15, 1913, and November 25, 1914, above set forth, there were shipments which moved prior and subsequent to that period on which the legally applicable joint rate of 20 cents was also charged, but on such shipments the rate charged did not exceed the aggregate of the intermediate rates. We find that the rate charged on these shipments is not shown to have been unreasonable.

No. 7579 concerns four carload shipments, three of iron rods and one of iron rods and bars mixed, which moved from East Chicago, Ind., to Storm Lake, Iowa, one in June, 1913, and the others in July and August, 1914. Charges were collected at a rate of 27 cents. The rates legally applicable were the fifth-class rates, governed by the western classification. Prior to April 1, 1914, the fifth-class rate from East Chicago to Storm Lake was 27 cents and on and after that date, 26 cents. The three shipments, which moved in July and August, 1914, were therefore overcharged 1 cent per 100 pounds. The complainant cites combination rates, in effect when the shipments moved, on bar, band, and hoop iron, and contends that such

combinations would have been applicable on these shipments but for the joint fifth-class rate. We do not agree with this contention. The rates legally applicable did not exceed the aggregates of the intermediate rates and are not shown to have been unreasonable.

In No. 7955 a number of less-than-carload shipments of cotton piece goods moved from Boston, Lowell, and Nashua to New London, Iowa, between November 16, 1912, and November 22, 1913. The shipments from Boston moved over so-called standard lines, those from Lowell over standard and rail-lake-and-rail lines, and those from Nashua over standard, differential, and rail-lake-and-rail lines. In each instance the Chicago, Burlington & Quincy moved the shipments into and beyond East Burlington. Lowell and Nashua take the same rates as Boston on traffic to Iowa. Charges were collected at rates of 84.5 cents on the shipments over the standard lines, 80.5 cents over the differential lines, and 77 cents, rail-lake-and-rail, composed of proportional rates of 65, 61, and 57.5 cents, respectively, to East Burlington and a proportional rate of 19.5 cents beyond. The latter rate was published in section 3 of Chicago, Burlington & Quincy tariff I. C. C. No. 10095. Section 4 of the same tariff contained a distance rate of 16 cents from East Burlington to New London. The tariff provided that if the rates named in section 4 made a lower rate on any shipment than the rates in section 3, the former rates would apply. Under the alternative rate basis provided by the tariff the component applicable on these shipments from East Burlington to New London was 16 cents. The rates legally applicable were 81 cents on the shipments moving over the standard lines, 77 cents over the differential lines, and 73.5 cents over rail-lake-and-rail lines, and the shipments were overcharged accordingly. Except with respect to the shipments which moved rail-lake-and-rail, the rates legally applicable from and to these points did not exceed any combination of intermediate rates. Contemporaneously with the movement of the shipments over the rail-lake-and-rail routes from Lowell and Nashua there was in effect over the same routes a combination rate of 72.4 cents, composed of a rate of 61.5 cents to Burlington and the Iowa distance rate of 10.9 cents beyond. We find that the rates legally applicable on the shipments which moved over standard and differential lines are not shown to have been unreasonable, but that the rates legally applicable on the shipments which moved from Lowell and Nashua over rail-lake-and-rail routes were unreasonable to the extent that they exceeded the aggregate of the intermediate rates contemporaneously in effect.

On many of the shipments, as a part of the commercial transactions, certain sums of money were credited or paid to complainants as "freight allowances," and it is urged on behalf of defendants that

the complainants are not entitled to reparation on such shipments. It is clear that the complainants paid the freight charges as such. The allowances were in some instances based on a fixed amount per 100 pounds and in other instances on a certain amount per case of from 600 to 700 pounds. A somewhat similar question was presented in *Sanford-Day Iron Works v. L. & N. R. R. Co.*, 41 I. C. C., 10, and we said at page 12:

To go into the matter of allowances between the parties would lead the Commission away from the direct results of the act of the carrier in the exaction of an unreasonable rate into the domain of indirect and remote consequences and perhaps into questions of equity between the vendor and vendee.

The reparation is due to the person who has been required to pay the excessive charge as the price of transportation. *Nicola, Stone & Myers Co. v. L. & N. R. R. Co.*, 14 I. C. C., 209.

It is impossible to determine the exact routes of movement of many of the shipments, or whether the rates legally applicable over the routes of movement exceeded the aggregates of the intermediate rates subject to the act.

We further find that the shipments for consideration were made as described; that complainants paid and bore the charges thereon; that they have been damaged to the extent of the difference between the charges paid and those that would have accrued at the aggregates of the intermediate rates subject to the act contemporaneously in effect over the routes of movement; and that they are entitled to reparation, with interest. The exact amount of reparation due can not be determined upon these records, and complainants should prepare statements showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the date on which the charges were paid, which statements should be submitted to the defendants for verification. Upon receipt of statements so prepared and verified we will consider the entry of orders awarding reparation. In some instances shipments moved over lines of carriers not parties defendant. These carriers may join with the defendants in the payment of the reparation found due. Defendants will be expected promptly to refund the overcharges mentioned.

The complaints in Nos. 7622, 7579, and 8002 will be dismissed.

51 I. C. C.

No. 8820.

GRAIN & HAY EXCHANGE OF PITTSBURGH
v.
PENNSYLVANIA COMPANY ET AL.

Submitted December 28, 1917. Decided December 19, 1918.

Demurrage charges assessed at Pittsburgh, Pa., on 10 carloads of grain shipped from various interstate points to Pittsburgh, inspected or assembled at Manchester yard and forwarded to elevators for transit services, including shipments weighed only, and forwarded in the same cars at through rates from points of origin, found to have been illegal. Reparation awarded.

A. M. Liveright and C. G. Burson for complainant.

Wm. W. Collin, jr., L. E. Hinkle, and W. M. Prall for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HARLAN, AND HALL.

BY DIVISION 3:

The complainant is a corporation representing a number of dealers in grain and hay at Pittsburgh, Pa. By complaint filed March 10, 1916, as amended, it alleges that the demurrage charges assessed at Pittsburgh on various carloads of grain, forwarded thereto from points outside the state of Pennsylvania subsequent to February 1, 1915, were and are illegal, unreasonable, and unjustly discriminatory. Reparation is asked on behalf of various named members of the complainant corporation, hereinafter termed the complainants.

Under the defendants' tariffs grain may be consigned to the Pennsylvania lines' hay and grain yard, hereinafter called the Manchester yard, in Pittsburgh, for the purpose of assembly and inspection. Consignees are given the option of treating this grain as "track" grain, in which event it may be reconsigned from the yard, or as "transit" grain, in which case it may be ordered to certain designated elevators within the switching limits of Pittsburgh and subsequently forwarded at the balance of the through rate. For the latter service no additional charge is imposed if the order to place the car at the elevator is given the carriers' agents within 24 hours after the first 7 a. m. following notice of the arrival of the car at the Manchester yard. Cars containing transit grain are not subject to demurrage during the time intervening such an order and the arrival of the cars

at the elevator, and the customary 48 hours' free time after placement is allowed for unloading the grain into elevators. The distance from the Manchester yard to the transit elevators is about 3 miles and the time occupied in moving these cars from the yard to the elevators has ranged from one to six days, dependent upon transportation conditions over which the shipper has no control.

While the demurrage has been assessed on many shipments, it has been paid on but 10, which are shown of record. They were transported to and assembled at the Manchester yard, and, after inspection, were ordered by the complainants, within the free period, to elevators designated in the defendants' tariffs. The grain was unloaded into the elevators within the free time provided. Various transit rights were accorded certain of the shipments, while as to the remainder the grain was weighed only. Apparently all were reloaded into the same cars in which they were received, and were forwarded to other consignees or points at the through rates. In each case all of the transit requirements necessary to entitle the shipments to through rates were complied with, under the supervision of the defendants' transit bureau.

Grain can be handled as transit grain, even though it goes through an elevator for the purpose of being weighed only and is then reloaded and reshipped; and the shipper is entitled to all of the services incident to transit grain under the tariffs in effect, which define transit as—

the stopping for inspection, weighing, cleaning, clipping, shelling, sacking, grading, bleaching, storing, mixing, change of ownership, consignee, or destination, and will apply only to such grain when in carloads as passes through the following elevator * * * and is forwarded subject to the following rules: * * *

The defendants rely upon the following further tariff provision, under which, without compliance with the transit rules and when accompanied by a certificate from the elevator in a specified form—

Grain in bulk, viz: Wheat, corn, oats, barley, or rye, may be delivered to elevators named herein for the purpose of weighing only, when reconsigning orders are furnished by the consignee at the time grain is ordered to the elevators * * *

It is conceded for the defendants that on cars ordered to the elevators for purposes other than "weighing only" the demurrage did not accrue. Demurrage was assessed on all the cars continuously from the expiration of the free time at the Manchester yard to the time they were ordered from the elevators, on the theory that they were "track" grain shipments, moved to the elevators to be weighed only and without release of the equipment, no final disposition orders having been received in such cases until the shipments were reconsigned from the elevators. For the defendants it is urged that the demurrage would be avoided if the reconsigning

orders were given before the cars leave Manchester yard, in which event the shipments could be weighed at the elevators in the same way; but complainants answer that this is impracticable as a rule, because customers seldom are secured in time.

As we construe the provision last above quoted, it is merely a permissive and optional alternative, in no wise modifying defendants' transit provisions or denying the benefits thereof to shippers who comply with the requirements thereunder. This provision would be controlling only in cases in which the transit requirements are not observed.

We find that the demurrage charges assessed on the shipments were illegal; that the complainants made the shipments as described and paid and bore the demurrage charges thereon; and that they were damaged and are entitled to reparation, with interest, as follows: Geidel & Leubin, \$6; Herb Bros. & Martin, \$5; Hardman & Heck, \$4; R. D. Elwood & Co., \$6; and R. S. McCague, \$3. An order awarding reparation will be entered.

51 I. C. C.

No. 9333.

CHROME STEEL WORKS ET AL.

v.

NEW YORK & NEW JERSEY STEAMBOAT COMPANY
ET AL.

Submitted May 7, 1917. Decided December 19, 1918.

Shipment of dies and shafting from Chrome, N. J., to Galveston, Tex., reshipped to Silverton, Colo., on which it is alleged charges were collected on basis of water rates to and from New York, not on file with the Commission, and the local rail rates from Galveston to destination, found to have been a through shipment from Chrome to Silverton. Refund directed on account of overcharge. Rates legally applicable not shown to have been unreasonable or unduly prejudicial, and complaint dismissed.

Whitehead & Vogl for complainants.

H. A. Scandrett for Union Pacific Railroad Company.

F. H. Wood for Southern Pacific Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HARLAN, AND HALL.

By Division 3:

Complainants are the Chrome Steel Works, a corporation engaged in the manufacture of mining and other machinery at Chrome, N. J., and the Gold King Leasing Company, a corporation engaged in operating mining properties at Silverton, Colo. By complaint, filed October 24, 1916, they allege that the charges collected by defendants on a carload shipment consisting of shoes, dies, bossheads, and crusher shoes and dies for steel stamp mills, hereinafter referred to as dies, and a box of iron shafting, forwarded October 24, 1913, from Chrome to Galveston, Tex., reshipped to Silverton, were illegal, unreasonable, and unduly prejudicial. Reparation is asked and the establishment of reasonable rates for the future on dies from Chrome and Galveston to Denver, Colo. The claim was presented to the Commission informally, apparently within the statutory period. Rates are stated in amounts per 100 pounds.

The articles referred to, other than the shafting, weighed 39,620 pounds. They are included under the western classification item—"Mining machinery: Shoes, dies, cams, heads, and tappets, cast iron or steel, for stamp mills." The shafting weighed 1,233 pounds. The shipment was billed to the Dolson Warehouse & Forwarding

Company at Galveston and moved as routed over the line of the New York & New Jersey Steamboat Company to New York and the Southern Pacific Company-Atlantic Steamship lines to Galveston. On the day following its arrival at Galveston it was rebilled by the original consignee to the Gold King Leasing Company at Silverton, and moved as routed over the Galveston, Harrisburg & San Antonio Railway, Houston & Texas Central Railroad, St. Louis, San Francisco & Texas and the St. Louis-San Francisco railways to Kansas City, Mo., Union Pacific Railroad to Denver and Denver & Rio Grande Railroad beyond. It is alleged that transportation charges aggregating \$925.59 were collected on the basis of the water rates to and from New York, not on file with this Commission, and the local rail rates from Galveston to destination. The amount of the charges collected can not be verified, as the freight bill submitted in evidence shows a total of \$979.19, and bears the notation "charges corrected down by claim," but the amount of the claim is not disclosed. The charges up to Galveston were carried forward as advanced charges. It appears that a loading charge of \$7.15 was assessed at Galveston which is not in issue.

On through shipments over the route of movement the legally applicable combination rates were \$1.73 on the dies, composed of the fifth-class rates of 93 cents from Chrome to Denver and 80 cents beyond, governed by the western classification, and \$2.16 on the shafting, composed of the fourth-class rates of \$1.16 to Denver and \$1 beyond, governed by the western classification. The rates from Chrome to Denver were joint rates. Under them reconsignment at Galveston was authorized. On June 15, 1914, the 93-cent rate on dies to Denver was reduced to 90 cents. On June 5, 1915, this rate was further reduced to 87 cents, and on August 1, 1917, the 87-cent rate was increased to 92 cents.

Complainants contend that this was a through shipment from Chrome to Silverton and that therefore the through rates from and to those points were legally applicable. It was testified that both the dies and shafting were shipped on orders of purchasers in and around Silverton; that this was always their destination, and that the billing to Galveston and the rebilling from that point was merely a device to obtain a combination rate made on Galveston which was thought to have been lower than would have applied on a through shipment. Complainants' evidence as to the real destination is supported by copies of markings on the articles shipped which are inserted in the original bill of lading from Chrome. No evidence was offered to show that the joint rates on the dies and shafting in effect from Chrome to Denver at the time of movement were unreasonable or unduly prejudicial.

While the complainants resorted to an unlawful device to defeat the through rate, the shipment nevertheless was a through shipment and we find that any charges collected thereon in excess of those that would have accrued on basis of the through rates herein found to have been legally applicable to a through movement were illegal. In view of the fact that we are unable to determine the exact amount of charges paid, and the further fact that both complainants appear to have borne portions of the charges, no order for reparation can be entered. Defendants should promptly refund the overcharges, with interest, to the party or parties properly entitled thereto. We further find that the rates legally applicable are not shown to have been unreasonable or unduly prejudicial.

Complainants urge that, if we conclude that the shipment was not a through shipment from Chrome to Silverton, we should find that the rate from Galveston to Denver was excessive. In view of our finding that it was a through shipment, we need not consider this alternative contention.

An order will be entered dismissing the complaint.

51 I. C. C.

No. 9551.

C. & J. MICHEL BREWING COMPANY

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY ET AL.

Submitted May 24, 1917. Decided December 19, 1918.

Rate legally applicable on beer, in carloads, from La Crosse, Wis., to Trosky, Minn., found to have been unreasonable. Reparation awarded.

S. J. Bolton and *W. W. West* for complainant.

T. A. Matthews, jr., for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HARLAN, AND HALL.

BY DIVISION 3:

The complainant, a corporation engaged in manufacturing beer at La Crosse, Wis., alleges by complaint filed February 15, 1917, that the rates charged by the defendants on 20 carloads of beer shipped from La Crosse to Trosky, Minn., between May 1, 1914, and March 22, 1915, were unreasonable and in violation of the long-and-short-haul rule of the fourth section of the act. Reparation is asked. The claim was presented to the Commission informally May 6, 1916, but the record does not disclose when the charges were paid. Claims covering shipments on which charges were paid two years or more prior to the filing of the informal complaint are barred. Rates herein referred to are carload rates, stated in cents per 100 pounds.

The shipments originated on the Chicago, Burlington & Quincy Railroad, hereinafter termed the Burlington. Four were routed by way of Minnesota Transfer, Minn., and the Chicago, Rock Island & Pacific Railway, hereinafter called the Rock Island; the remainder by way of the Rock Island, but no junction point was shown. All moved over the Burlington to Minnesota Transfer and the Rock Island beyond. Charges on 15 of the shipments were collected at a rate of 22 cents and on the remaining 5 at a rate of 30.1 cents. A combination rate of 20.2 cents was applicable, composed of a commodity rate of 15 cents to Pipestone, Minn., a point beyond Trosky on the Rock Island to which Trosky is directly intermediate, and the fifth-class rate of 5.2 cents from Pipestone back to Trosky. All of the shipments were overcharged.

The 15-cent rate to Pipestone was published subject to rule 77 of Tariff Circular 18-A, which provides that upon reasonable request therefor rates not in excess of those to the more distant points would be established to intermediate points upon one day's notice. On January 4, 1915, the complainant requested the establishment of the Pipestone rate to Trosky, and effective April 1, 1915, the 15-cent rate was established. On September 1, 1915, the rates to Pipestone and Trosky were increased to 20 cents, and on June 25, 1918, to 25 cents. The defendants are willing to pay reparation upon the basis of the 15-cent rate on shipments which moved after the request for its establishment, but are unwilling to do so on shipments moving prior to that time.

We find that the rate legally applicable was unreasonable to the extent that it exceeded 15 cents per 100 pounds; that the complainant made the shipments as described and paid and bore charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest, on all shipments as to which claims are not barred. Upon this record we are unable to determine the exact amount of reparation due, and the complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, also specifying the dates on which the charges were paid, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation. As the rate to Trosky has not exceeded the rate to Pipestone since April 1, 1915, no order for the future is necessary.

51 I. C. C.

No. 9745.¹

MEMPHIS FREIGHT BUREAU ET AL.

v.

CHESAPEAKE & OHIO RAILWAY COMPANY ET AL.

Submitted December 13, 1918. Decided December 19, 1918.

First-class rating found legally applicable on street-railway transfers, in less than carloads, from Philadelphia, Pa., to Memphis, Tenn., and not shown to have been or to be unreasonable or unduly prejudicial. Complaints and supplemental complaints dismissed.

Jas. S. Davant for complainant.

Alex. M. Bull for defendant carriers.

R. Walton Moore for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HARLAN, AND HALL.

BY DIVISION 3:

These complaints, filed June 18, 1917, as amended, on behalf of the Memphis Street Railway Company, hereinafter called the complainant, assail the charges assessed by the defendants on 12 less-than-carload shipments of street-railway transfers forwarded from Philadelphia, Pa., to Memphis, Tenn., between July 28, 1915, and April 2, 1917, as illegal, unreasonable, and unduly prejudicial, and pray for reparation and a third-class rating. By supplemental complaints filed on September 30, 1918, the Director General of Railroads was made a party defendant. The answers thereto of the Director General of Railroads deny that complainant is entitled to relief and pray that the original complaints and supplemental complaints be dismissed. No further hearing was asked or had. Rates are stated in amounts per 100 pounds.

Two of the shipments moved prior to January 1, 1916, on which date the classification basis was changed from official to southern, and the others moved subsequent to that date. This change was a part of the general revision of rates in the south in conformity with *Fourth Section Violations in the Southeast*, 30 I. C. C., 153. Charges were collected on the shipments made prior to January 1, 1916, at the first-class rate of 94 cents, applicable under the official classification on "printed matter, paper or paper board, not otherwise indexed

¹ This report also embraces No. 9790, Same v. Alabama & Vicksburg Railway Company et al.

by name," and on the shipments made subsequent to the date named at the first-class rate of \$1.03, applicable under the southern classification on articles of the same description. The complaints are directed solely against the classification ratings.

It appears to be complainant's contention that the third-class rate of 63 cents was legally applicable on the shipments made prior to January 1, 1916, under the official classification rating on "checks or tickets, register or sales, bound or unbound, printed, in boxes," and the second-class rate of 84 cents on the other shipments, under the southern classification rating on articles of the same description, upon the ground that the transfers are analogous to the articles described. There was and is no specific rating on street-railway transfers in either the official or southern classification, but neither classification authorizes the application of a rating on analogous articles because of the absence of a specific rating, where the article in question is covered by a rating on a group of articles not otherwise indexed by name. The first-class rates were, therefore, legally applicable both before and after January 1, 1916.

The complainant further contends that, since register or sales checks or tickets, hereinafter called sales checks, are rated third class, less than carload, in the official and western classifications, street-railway transfers should be accorded the same rating in the official and southern classifications. The rating asked is lower than that now applicable on sales checks in the southern classification. The complainant's transfers are printed on a cheap grade of paper and made into pads of 100 transfers each. They are packed in boxes, 36 by 21 by 24 inches, which weigh about 400 pounds. They are worth \$9.50 per 100 pounds and weigh 38.1 pounds per cubic foot. Sales checks are printed on paper similar to the transfers, in duplicate or triplicate form, and made into pads of 50 checks each. They are packed in boxes, approximately 14 by 20 by 40 inches, which weigh approximately 200 pounds. The duplicate checks are worth \$7.93 per 100 pounds and weigh 24.9 pounds per cubic foot, while the triplicate checks are worth \$16.13 per 100 pounds and weigh 30.9 pounds per cubic foot. It is conceded that there is no competition between these articles or the users of them. The defendants explain that the lower rating on sales checks than on transfers and other forms of printed matter is due to the close relation of the sales checks to blank books with paper covers, which are rated third class, less than carload, in the official and southern classifications, because of the greater tonnage of sales checks, and to encourage the movement of the same, sales checks being subject to competition with articles produced locally, while transfers are only produced at a few points and their movement is not affected by the rates.

The complainant submitted numerous comparisons of the ratings on paper articles, in less than carloads, under the different classifications, practically all of which were lower than first class, but the only other printed matter mentioned that is rated lower than first class in any of the classifications was automatic-register paper in rolls, which is used for the same purpose as sales checks and rated the same in both the official and southern classifications.

The defendants maintain that first class is a reasonable rating on printed matter, in less than carloads, and that it would be impracticable to separate street-railway transfers from the general class of printed matter. They submitted samples of a large number of articles of various forms, ranging in value of from 10 cents to \$2 per pound, which take the rating on printed matter. This rating applies to railroad tickets, theater tickets, and other tickets of admission. Advertising matter and stationery, not otherwise indexed by name, are rated separately; the former first class in the official classification and second class in the southern classification, and the latter first class in both classifications. The value of printed matter is shown to depend not only on the quality of the paper but also on the character and amount of printing and on the quantities produced, and defendants therefore consider it impracticable to attempt to draw any distinctions based on value. In *Proprietary Asso. of America v. N. Y. C. & H. R. R. R.*, 26 I. C. C., 818, we refused to grant a rating lower than first class on certain advertising matter, though it was said to be worth only \$5 per 100 pounds, and referred to the endless confusion that would result from classifying printed matter according to value. In *Planters Compress Co. v. O., O., O. & St. L. Ry Co.*, 11 I. C. C., 382, we said that no classification can be so minute as to conform to the differing varieties and conditions of traffic, and that to separate different grades or densities of the same article into different classes with varying rates, even if it could be accomplished, would go far to defeat the real purpose of classification.

We find that the ratings assailed are not shown to have been or to be unreasonable or unduly prejudicial.

An order dismissing the complaints and supplemental complaints will be entered.

51 I. C. C.

No. 9833.
BLISS COOK OAK COMPANY
v.
MISSOURI PACIFIC RAILROAD COMPANY ET AL.

Submitted February 28, 1918. Decided December 19, 1918.

Rates on hardwood lumber, in carloads, from Blissville, Ark., to points in Missouri, Kansas, Nebraska, Iowa, and Colorado not shown to have been unreasonable, but found to have subjected complainant to undue prejudice and disadvantage. As the Director General is not a party defendant the present rates not considered and complaint dismissed.

J. H. Townshend for complainant.

Henry G. Herbel, Fred G. Wright, and E. N. Clark for Missouri Pacific Railroad Company and Denver & Rio Grande Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HARLAN, AND HALL.

BY DIVISION 3:

In its complaint filed August 10, 1917, the complainant alleges that the rates on hardwood lumber, carloads, from Blissville, Ark., to Kansas City, Mo., Omaha, Nebr., and other points in Missouri, Nebraska, Iowa, Kansas, and Colorado, are unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that they exceed the rates from Dermott, Arkansas City, and Furth, Ark., and other points, and asks that just and reasonable rates be established. Rates are stated in cents per 100 pounds and are those in effect prior to June 25, 1918, on which date they were increased under General Order No. 28, issued by the Director General of Railroads.

The hardwood producing territory in Missouri, Arkansas, and Louisiana is divided, for rate-making purposes, into various groups. Rates to Kansas City and other western points are graded up in groups west from the Mississippi River and south from Cairo, Ill. These groups are irregular in outline, having been formed with reference to Mississippi River gateways and subsequently modified by the competition of lines having direct routes to the Missouri River. Blissville is in group 4-D and Dermott, Furth, and Arkansas City are in group 3-D. The rates to five representative destinations follow:

From points in groups—	To Kansas City, Mo.	To Topeka, Kans.	To Omaha, Nebr.	To Wichita, Kans.	To Denver, Colo.
	Cents.	Cents.	Cents.	Cents.	Cents.
1-B.....	18	22.5	21.5	25	37
2-A.....	17	22	22	25	37
2-B.....	18	22.5	22	25	37
2-C.....	19	24	23.5	25	37
2-D.....	19	24	24	25	37
2-E.....	19	24	24	25	37
3-D.....	21	26	25	27	37
4-D.....	23	27.5	26	27.5	37
5.....	24	27.5	26.5	27.5	37

In 1911 all northbound rates on hardwood lumber were 2 cents lower from Arkansas City than from Blissville and Dermott, those to Kansas City being 19 and 21 cents and to Cairo 11 and 13 cents, respectively. In *Northbound Rates on Hardwood from Southwest*, 32 I. C. C., 521; 34 I. C. C., 708, we found that the proposed rates on hardwood lumber which did not exceed those on yellow-pine and cypress lumber, from this territory to Cairo and to the Missouri River territory, were reasonable. Following that decision, the rates to Cairo, Kansas City, and related points were increased 2 cents. In accordance with a stipulation in another proceeding, the Missouri Pacific Railroad reduced the rates from Blissville and Dermott to Cairo, when for beyond, 2 cents, and attempted to increase that from Arkansas City 2 cents, so that the rates would be the same from all three points, but the increased rate from Arkansas City was suspended and never became effective. Later the rates from Dermott to Kansas City and the other western points were reduced 2 cents by placing Dermott in the same group with Arkansas City.

The present complaint is directed against the alleged prejudicial nature of the rates from Blissville, as compared with the rates from Dermott and other near-by points in group 3-D, and no convincing evidence of the unreasonableness of the rates from Blissville was submitted. Blissville is 9 miles south of Dermott and takes the same rates on hardwood lumber as Dermott and Furth to New Orleans, and as Dermott, Arkansas City, and Furth to Texas and Oklahoma. On yellow-pine and cypress lumber Blissville takes the same rates as Dermott and Furth to all territories, including Kansas City and the other western points. On cottonwood or gum box material, staves, and heading to Omaha and other western points, Blissville takes the same commodity rate as Dermott, Arkansas City, and Furth.

The complainant alleged that a local distance commodity rate of 2.5 cents from Blissville to Watson, Ark., applicable on rough material, viz, rough lumber, logs, billets, planks, rough staves, heading, and flitches, carloads, for stacking, dressing, or manufacture and re-shipment via the same line, would, when combined with the group

2-E rates applicable from Watson to Kansas City and other western points, produce a lower basis than the through rates from Blissville, in violation of the fourth section. The rate cited is applicable only in connection with transit services, and as the combination is not one that could be applied in the absence of a through rate, there is no fourth section violation.

The complainant's mill has a daily capacity of 50,000 feet of lumber, and from 10 to 15 per cent of its product is shipped to western points where it meets active competition from the mills at Dermott, Arkansas City, and Furth. The logging and manufacturing operations at Blissville are similar to those at Dermott and Arkansas City, and the complainant contends that it is handicapped in procuring logs because of the higher rate on the product to the western markets. The inbound rates on logs are not in issue.

The Missouri Pacific, the only defendant represented at the hearing, sought to justify the 2-cent difference between the rates from Blissville and those from Dermott, and other points in group 3-D, on the following grounds: That it is the natural and reasonable result of a group adjustment of rates; that the adjustment was approved in *Northbound Rates on Hardwood, supra*, and other cases; that similar grouping is used in the rates to other territories; and that while the rates from Blissville and Dermott might properly be adjusted with regard to the rates from Arkansas City on traffic to central freight association territory, the situation with respect to rates to western markets is very different. Rates from Arkansas City to Cairo are depressed by water competition, actual and potential, and rough material formerly could be shipped from Blissville and Dermott to Arkansas City, milled and reshipped to points beyond Cairo on a basis lower than the through rates applicable from Blissville and Dermott. On traffic to western markets, Dermott was given the same basis as Arkansas City, and Blissville was refused this basis because the carriers did not wish to extend the adjustment. The Missouri Pacific feared that the extension of group 3-D south to Blissville would necessitate extensions of that group elsewhere, which would result in material reductions in revenue. The difference of 2 cents between rates from near-by points in different rate groups is claimed to be not unusual or unreasonable. For the Missouri Pacific this difference is compared with the difference of 5 cents between certain rates on lumber from the Pacific coast, and to New Orleans from points on opposite sides of the Louisiana-Arkansas state line. It is to be noted that these transcontinental rates are not comparable to those in controversy, and that the rates from Louisiana points to New Orleans apply only on intrastate business. The principle that differentials diminish with increasing distance and vanish when the

distance on which the differential is based becomes inconsiderable in proportion to the total distance from basing point to destination, enunciated in *Williams Co. v. V. S. & P. Ry.*, 16 I. C. C., 482, is adverted to for the defendants as justifying the difference in rates between Dermott and Blissville. In that proceeding the differences, or differentials, under consideration were those between St. Louis, Mo., and Memphis, Tenn., whereas here the difference between Dermott and Blissville is 2 cents in the rate for a difference in distance of 9 miles in a haul of over 600 miles to Kansas City.

For the defendants it is contended that the complainant's disadvantage is one of geographical location only; that the prejudice resulting from the grouping adjustment of the rates is not unjust or undue; and that since the complainant is in competition with shippers at Memphis and other points which have lower rates to the western markets the competition of the mills at Dermott and other points in group 3-D is necessarily inappreciable.

The rate groups are irregular in outline, and particular phases of the adjustment have been the subject of complaints as a result of which we dealt with the situations there presented. In this connection it might be remarked that we did not approve the grouping adjustment in *Northbound Rates on Hardwood, supra*, but found that the carriers had justified the proposed increased rates. It may be, as is indicated by this record and by an examination of the tariffs, that the adjustment of rates on lumber from this territory is unnecessarily complex and exhibits many inconsistencies, but, if so, the present proceeding does not afford the basis for effecting a readjustment. We find that the rates attacked are not shown to have been unreasonable, but that they subjected complainant to undue prejudice and disadvantage to the extent that they exceeded the rates contemporaneously maintained to the same destinations from Dermott. The carriers concerned are now under federal control and an opportunity was afforded to amend the complaint by making the Director General of Railroads a party defendant. This was not done. No finding or order for the future can be made.

An order dismissing the complaint will be entered.

No. 9395.

PACIFIC LUMBER COMPANY ET AL.

v.

NORTHWESTERN PACIFIC RAILROAD COMPANY ET AL.

Submitted October 3, 1918. Decided December 6, 1918.

Rates on lumber and other forest products in carloads from certain points on the Northwestern Pacific Railroad north of Willits, Cal., to points in eastern defined territories, Colorado common points and east, found unjust, unreasonable, and unduly prejudicial to the extent that they exceed the rates on the same commodities from what are known as California coast group points to the same destinations.

Joseph N. Teal, William C. McCulloch, and Rogers MacVeagh for complainants.

Stanley Moore, C. W. Durbrow, E. W. Camp, and T. J. Norton for defendants other than the Director General of Railroads. .

R. Walton Moore, Stanley Moore, and T. J. Norton for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

AITCHISON, *Commissioner*:

This proceeding was commenced prior to the assumption of federal control of the principal systems of railroad transportation. The complaint, brought by 11 corporations engaged in the manufacture of lumber and other forest products in the Humboldt Bay district, Cal., attacks the adjustment of rates for the transportation of lumber and other forest products from certain points on the line of defendant Northwestern Pacific Railroad Company north of Willits, Cal., in that district, to destinations in eastern defined territories, Colorado common points and eastward. What we will term in this report the California coast group or coast group of lumber-producing points takes in all main-line and practically all branch-line points in that state on the Northwestern Pacific Railroad, Willits, and south; on the Southern Pacific, Summit (Nevada county), Potholes, and west; on the Atchison, Topeka & Santa Fe, National City, Daggett, and north; on the Western Pacific, Las Plumas and west; on certain short roads connecting with the Southern Pacific and Atchison, Topeka & Santa Fe; and points in Oregon on the Klamath Falls

branch of the Southern Pacific. The rates from all lumber-producing points in this large group, which extends for an extreme distance of over 1,000 miles north and south and over 175 miles east and west, are blanketed to eastern defined territories. The rates from points on the Northwestern Pacific north of Willits, which are about 150 miles therefrom, are excepted from the blanket and are higher than the coast group rates. In the complaint it is alleged that the rates from the Humboldt Bay points are (a) excessive, unjust, and unreasonable, (b) unjustly discriminatory, and (c) subject complainants and the excepted points to undue prejudice and disadvantage in favor of competing lumber manufacturers located in the coast group. The Commission is asked to require defendants to establish and put in force from the excepted points rates which shall be no higher than those contemporaneously in effect from the coast group, or such rates as the Commission may deem reasonable and just.

After the hearing, a report proposed by the examiner before whom the testimony was taken was served upon complainants and the defendants. Exceptions to the proposed report were taken by the complainants and by defendants Northwestern Pacific Railroad Company, Southern Pacific Company, and Atchison, Topeka & Santa Fe Railway Company; other parties served with the proposed report did not except.

Subsequent to the filing of these exceptions to the proposed report, but before they came on for argument, December 26, 1917, the President issued a proclamation under which control generally of the transportation systems of the country, including the principal defendants in this case and the exceptants to the proposed report, was assumed by the federal government on December 28, 1917. The facts with respect to the appointment by the President of a Director General of Railroads and the operation of the railroads under his control are stated in *Willamette Valley Lumbermen's Assn. v. S. P. Co.*, 51 I. C. C., 250. Under the provisions of the federal control act, approved March 21, 1918, the Director General initiated a general increase in freight and passenger rates upon roads under federal control, effective as to freight on June 25, 1918. As to lumber and articles taking the same rates, also other forest products, rates on which are not higher than on lumber, the increase amounted to 25 per cent, but not to exceed 5 cents per 100 pounds. The effect of the order of the Director General was to increase uniformly by 5 cents the rates from the California coast group and from the Humboldt Bay points on the Northwestern Pacific outside of that group, to the eastern defined territories described in the complaint.

In the manner provided by our rules, a supplemental complaint was filed which made the Director General of Railroads a party de-

fendant. Answer was filed on his behalf. The complainants notified the Commission that they did not desire to introduce additional evidence, and no request to introduce evidence was made by the Director General or by any of the other defendants.

At the argument the Director General stipulated with the complainants that the evidence already taken might be introduced for what it was worth, the same as if brought into a new case, subject to such exceptions to its relevancy and competency as the Director General might think proper to take; and the case was heard on that record and with that stipulation.

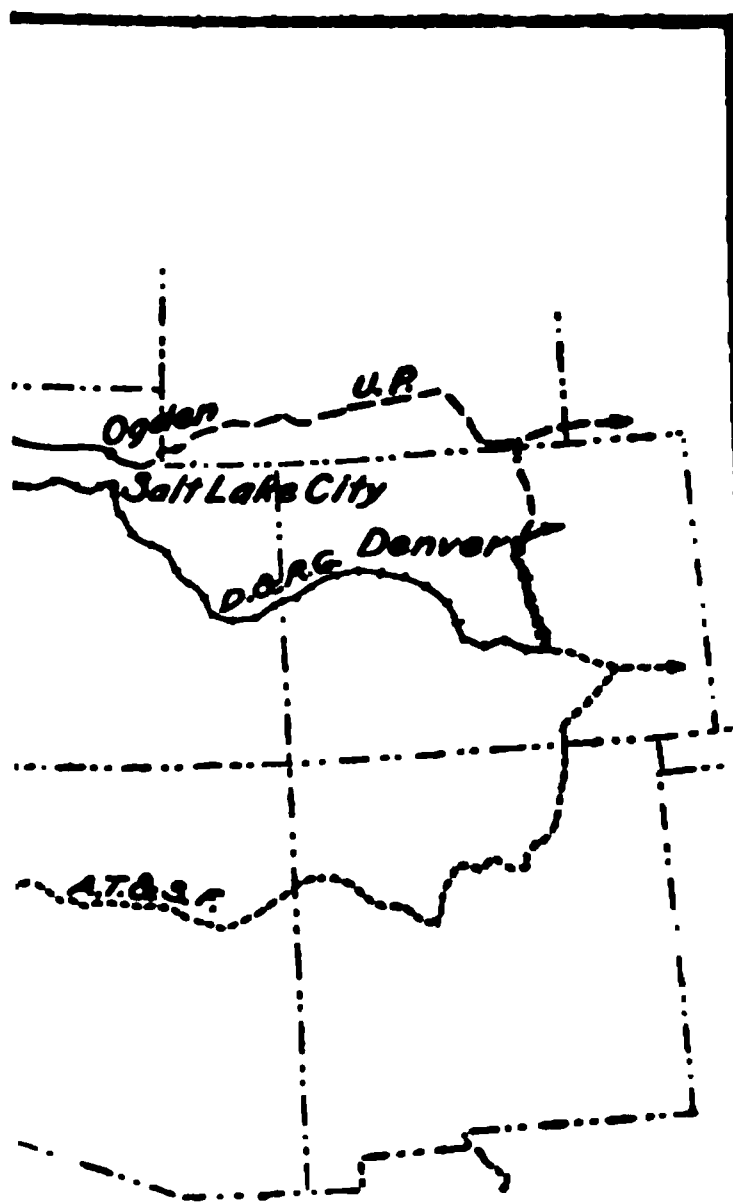
In answer to a question by the Commissioner presiding, whether there were any facts or evidence in the possession of counsel or the Railroad Administration that would assist the Commission to arrive at the proper determination of this case that were not in the record, counsel for the Director General said:

We have introduced the only facts that we think should be put in the record, and it seems to me that you would have taken judicial notice of those facts even if we had not offered them. They are represented by Order 28 and by the certificate contained in Order 28 which was made to the Commission.

We may first examine the rate adjustment carried by the defendants, the various railroads, at the time of the assumption of federal control. The charge of undue and unreasonable prejudice and disadvantage to the complainants will be considered at the outset. The rates stated are, except as otherwise specially noted, those carried by the railroads and by the Director General prior to the increase required by General Order No. 28, June 25, 1918, and are expressed in cents per 100 pounds.

Complainants desire a rate equality on their products with their competitors in the California coast group, as already described, to eastern defined territories. There are certain groups of lumber-producing points located east of the coast group in California and Nevada and north of the coast group in Oregon and Washington which are accorded the same or lower rates than the coast group; but, as complainants limit their charge of undue prejudice and disadvantage to the adjustment of rates with points in the coast group, no issue is presented in respect to the adjustment of rates with points in the other groups referred to. It also appears that Trinidad, Cal., the northern terminus of the Northwestern Pacific, takes higher rates than the other points on that line north of Willits; but, as the complaint attacks only the rates "from the mills of the complainants" and none of the complainants have mills at Trinidad, the adjustment from that point need not be considered. To portray graphically the relative location of the various groups, a map is inserted.





COMPLAINANTS AND THEIR COMPETITION IN EASTERN MARKETS.

The only redwood forests in the world are in California, and they are practically confined to a narrow belt extending along the Pacific coast between San Francisco Bay and the Oregon line, to the mountain section near Santa Cruz, and to comparatively small and scattered areas in the central interior of the state. The redwood is the famous big tree of California. The species found along the coast is practically the same character of wood as the interior species; the two woods are sold in eastern markets as redwood. Complainants' mills are located at Scotia, Eureka, Metropolitan, Newburg, Samoa, Little River Junction, Bucksport, and Essex, points on or near Humboldt Bay, which will hereinafter be referred to as Humboldt Bay points. In this section the redwood timber is interspersed with fir and pine. About 85 per cent of complainants' normal output consists of products manufactured from redwood and the remainder from the other two woods named.

All the complainants manufacture lumber and shingles; two also operate extensive factories for turning out all kinds of cut stock for doors, incubators, beehives, silos, and other articles, as well as window frames, balusters, porch rail, moldings, lattice, and other millwork; and one of the latter two also manufactures sash and doors. These two complainants have a capital investment of about \$15,000,000, employ over 2,000 hands, operate extensive logging roads, and have a daily capacity of about 750,000 feet of lumber. Up to the present time most of the eastern demand has been for mixed cars of lumber and millwork, consequently most of the shipments to that territory have been made by the two complainants referred to.

During the year 1916 seven of the complainants shipped by rail a total of 6,313 cars, divided as follows: Redwood products, 5,235 cars; fir products, 206 cars; pine products, 343 cars; and mixed woods, 529 cars. Of these total rail shipments 4,546 cars went to California and other states west of Colorado, leaving 1,767 cars which found destination in eastern defined territories. The 1,767 cars were divided: 1,405 cars of redwood products, 5 cars of pine products, 11 cars of fir products, and 346 cars of mixed wood products. As to destination territories, the 1,767 cars were divided: 160 cars from Colorado to the Missouri River line, 559 cars from the Missouri River line to the Indiana-Illinois state line, 527 cars to central freight association territory, 485 cars to eastern trunk line territory, including 9 cars to Canada, and 36 cars to the southeast.¹

¹ The above figures are taken from exhibits filed by complainants. They do not agree with figures given by defendants, but the differences are not important.

Between two-thirds and three-fourths of the output of complainants' mills is shipped out by water from Humboldt Bay ports.

Complainants claim, and the record shows, that they come in sharp competition with redwood manufacturers located in the coast group. Among the coast group points shipping redwood, Pittsburg, Willits, Santa Cruz, and Sanger were mentioned. During the year 1916 there were shipped into eastern defined territories from these four points 534 cars, 207 cars, 40 cars, and 120 cars, respectively, or a total of 901 cars. The lumber shipped from Pittsburg, which is on San Francisco Bay, is manufactured from timber brought in by boats; most of that shipped from Willits originates on a short road extending therefrom to Fort Bragg on the Pacific coast; that shipped from Santa Cruz is largely made from timber brought to the mills by short logging roads; while that originating at Sanger is cut from logs sent to the mill down a flume 59 miles in length. On the other hand, complainants' mills are located comparatively close to the timber, so that their cost of getting the finished lumber on the cars at trunk line points of origin is lower than that of the redwood manufacturers in the coast group. Defendants seek to justify the differential imposed on shipments from Humboldt Bay points by the investment and the cost and value of the service, and point to these conditions as indicating the value of the service which the carriers had provided for the shipper. If it be that complainants enjoy advantages in accessibility of supplies, location of mills, and cost of production which overcome their disadvantage in freight rates, it is not the province of carriers to take conditions of that character into account in adjusting their rates between competing localities. The Humboldt Bay points can not be denied an equality of rates with the coast group points merely because the complainant manufacturers enjoy peculiar natural advantages over their coast group competitors. The timber manufactured at Sanger is not materially different from that manufactured at the Humboldt Bay points, and the record clearly shows that both are redwood and are sold as such throughout the eastern markets. One of the complainants has purchased lumber from the Sanger mill and applied it on its own orders for redwood.

Complainants compete actively with manufacturers of white and sugar pine, and to some extent with manufacturers of fir located in the coast group. White and sugar pine are the predominant woods grown in the coast group, and large quantities of the lumber and other products manufactured therefrom are shipped into eastern territories. On the other hand, the local market for fir is almost sufficient to take care of the produc-

tion. Only about 1 per cent of the fir cut in California finds its way into eastern territories. Redwood, like white and sugar pine, is a soft wood, and all three of the woods can be and are used interchangeably in practically every way except that of flooring. Redwood is a little too soft for flooring. In California, where redwood is well known, complainants have had no difficulty in convincing the trade of its merits, but in eastern territories, where it is not so well known, considerable missionary work has been necessary in order to convince the trade that it is as good a lumber as white or sugar pine. Redwood has particular virtues in the way of lasting qualities, and consequently has been received with special favor for exterior work or for use in the ground where ability to resist rot is a factor. There are many different kinds of redwood millwork for which there is no market at all in California, and an outlet must be found for the surplus in eastern territories. In many eastern territories, such as Kansas and Nebraska, for example, complainants state that their principal competition is with white and sugar pine. They also state that if they had an equality of rates with their coast group competitors they could ship out a great deal of stock which is now burned as fuel. On occasions complainants are shown to have lost large contracts to their competitors in the coast group on account of the adjustment of rates here complained of.

In opposition to evidence introduced by complainants as to the difficulties under which they labor in competing with manufacturers in the coast group, the Southern Pacific presented an exhibit showing that, of all the cars of lumber handled by it to eastern territories during the calendar years 1915 and 1916, only 38 per cent of those which originated on the main line north of Tehama, Cal., and on its Klamath Falls branch went east of St. Louis, whereas 63 per cent of those which originated on the Northwestern Pacific went east of St. Louis. The percentages on sash, doors, and general millwork were 46 and 100, respectively. This exhibit does not include the movement from other producing points in the coast group, nor does it show the number of cars represented by the different percentages. No similar information was furnished by the Santa Fe.

Defendants also contended that complainants' only substantial competition is with manufacturers of fir, cedar, and spruce in the north Pacific coast group and of cypress in the south. The complaint does not attack the adjustment of rates as between the Humboldt Bay points on the one hand and the north Pacific coast and California coast group points on the other. Whether complainants' competition is with manufacturers of redwood in the coast group, or of white and sugar pine in that group, or of other woods in other groups, is immaterial; complainants do compete substantially with manufacturers

in the coast group. The lumber products shipped from the Humboldt Bay points and those shipped from the coast group points are used for the same purposes; they are both produced in larger quantities than the California market demands, and both are shipped to common consuming markets in eastern defined territories.

Some stress is laid by defendants upon testimony to the effect that the average loading of redwood is less than that of white and sugar pine, and that the average value per ton of redwood is greater than that of white and sugar pine. The evidence in respect to these matters is conflicting, but, on the whole, the record indicates that the kiln-dried redwood from which the millwork shipped to eastern territories is manufactured is lighter per 1,000 feet, and for that reason slightly more expensive per ton, than is white or sugar pine. Redwood is not as expensive as pine per 1,000 feet. The average car loading of each of the woods is well over the required minimum, which is the same, and the three woods take the same rates from common points of origin. On account of the adjustment of rates and the fact that redwood is not as well and favorably known as white and sugar pine in eastern markets, complainants are compelled to fill out what might otherwise be straight cars of lumber with general millwork, which is lighter and more expensive than lumber. The equality of rates here requested will encourage the shipment of more straight cars of lumber, thereby increasing the average loading and decreasing the average value of all cars shipped. On the other hand, it may be inferred from the testimony, in respect to certain kinds of products, that under present conditions complainants accept lower than regular prices in order to meet competition, but that under the proposed adjustment they would not do so to the same extent. The rates on lumber apply on such a long list of articles of various grades, weights, and values that it is difficult to estimate what effect higher rates from one producing section than from another and competing producing section has upon the average loading and average value of all cars shipped by the respective producing sections to common consuming markets. Moreover, when the record herein was made, the prices of all kinds and grades of lumber were abnormally high and constantly changing, so that it would be practically impossible to make a comparison of average values which could, with any degree of assurance, be stamped as representative.

THE RATE ADJUSTMENT PRIOR TO JUNE 25, 1918.

The subjoined table is a comparison of the rates and distances from typical points in the Humboldt Bay district at which complainants' mills are located, and in the coast group at which their competitors are located, to representative consuming markets in eastern defined

territories. Distances are shown to Denver only, as the relation is fairly typical of that to points beyond. As has been stated, the rates shown are those carried prior to the increases required by the Director General in his General Order No. 28; and each, since that order became effective, has been increased 5 cents.

1. Lumber and other forest products, exclusive of shingles.
2. Shingles, in straight or mixed carloads with lumber and other forest products.

¹ Proportional rates applicable on traffic destined to points in central freight association and Buffalo-Pittsburgh territories. No through rates in effect to these territories.
² Rates shown from Pittsburg and San Pedro are so-called proportional rates applicable on traffic brought from Humboldt Bay and other northern California ports.

This table shows that on lumber and other forest products, exclusive of shingles, the Humboldt Bay points pay 10 cents more than the coast group points to all eastern territories.

It is shown herein that on shingles, in straight or mixed carloads with lumber or other forest products, the Humboldt Bay points are given the same rates as the coast group points as far east as the Mississippi River, and rates 5 cents higher to Chicago, 2½ cents higher to central freight association and Buffalo-Pittsburgh territories, and 5 cents higher to New York. No explanation could be given at the hearing for this departure from the general rule of rate making that differences in rates should decrease with distance. In argument for defendants it was stated that the California-coast group carriers elected to meet the north coast group rate on lumber, but did not do so on shingles, and that generally the north coast group rates control the situation. No explanation of the rate relation of the California coast group with the north coast group, how-

ever, can justify an improper rate relationship as between the California coast group and the Humboldt Bay points. The rates from the north coast group to Chicago are 67 cents on shingles, 65 cents on cedar lumber, and 55 cents on cottonwood, fir, spruce, and pine lumber.

The so-called proportional rates from Pittsburg and San Pedro are applicable on lumber and shingles manufactured from logs brought in by boats. As the boat lines which bring the logs to the ports are not subject to the act to regulate commerce and have no tariffs on file with us, the rates shown in the above table from the ports are not, properly speaking, proportional rates. *Conf. Ruling 304b; St. Paul Board of Trade v. M., St. P. & S. Ste. M. Ry. Co.*, 19 I. C. C., 285; *Bascom Co. v. A., T. & S. F. Ry. Co.*, 17 I. C. C., 354; *Crescent Coal & Mining Co. v. C. & E. I. R. R. Co.*, 24 I. C. C., 149, 155. It will be noted that these so-called proportional rates are lower than the rates from the Humboldt Bay points on shingles as well as lumber, and that the differences are irregular. From Pittsburg, for example, the so-called proportional rates are 10 cents less than the rates from the Humboldt Bay points to Missouri River and Mississippi River territories, 15 cents less to Chicago, 12½ cents less to central freight association and Buffalo-Pittsburgh territories, and 10 cents less to New York. No explanation was given for this adjustment, nor for the fact that the Humboldt Bay points pay 5 cents more to Chicago than to Mississippi River points, while these ports are given so-called proportional rates which are the same to Chicago as to Mississippi River points.

In this connection a comparison of the general adjustment to eastern defined territories with that to intermediate points in Utah, Nevada, and Arizona, and also to points in California, is interesting.

The complaint does not claim undue prejudice in the adjustment of rates to the intermediate or California points, but the adjustment made by the carriers to those territories assists in developing the general rate policy they have adopted, and bears upon the reasonableness of the rates under attack.

The difference in rates between the Humboldt Bay points and Willits, at Reno, Nev., just across the California line, is 5 cents. To points east of Reno this difference gradually increases until Ogden, Utah, is reached, where the difference is 10 cents. In explanation of this adjustment a witness for the Southern Pacific testified that the rates from the Humboldt Bay points and Willits to points in Nevada are made differentials of 10 cents and 5 cents, respectively, over the rates from San Francisco, with the rates to Ogden as maxima. While this explanation throws some light on the varying differences in rates to points between Reno and Ogden, it does

not explain or justify the propriety of a difference of 10 cents at Ogden and points as far as 2,500 miles east thereof in the face of a difference of only 5 cents at Reno. The differences in rates between the Humboldt Bay points and points on the Klamath Falls branch of the Southern Pacific range from $3\frac{1}{2}$ to $5\frac{1}{2}$ cents at Reno and are 10 cents at Ogden.

A comparison with the adjustment to points in California renders even more inexplicable the adjustment to eastern territories. The difference in rates from the Humboldt Bay points and Willits at Stockton and Sacramento, two important consuming markets, is only $2\frac{1}{2}$ cents, the rates to those points being 16 cents and $13\frac{1}{2}$ cents, respectively. It was stated that the rates from the Humboldt Bay points to these two destinations are held down by water competition, but it appears that the rates from Kirk, Oreg., to the same destinations are $14\frac{1}{2}$ cents and 12 cents, respectively. There is no water competition from Kirk, and the distances therefrom are greater than the average distances from the Humboldt Bay points. It appears also that the difference of $2\frac{1}{2}$ cents obtains at points south of Sacramento and Stockton where there is no water competition from any producing points. East and south of the territory carrying a difference of $2\frac{1}{2}$ cents the adjustment shades into a difference of 5 cents until points south of Mojave are reached, where there is no difference in rates as between the Humboldt Bay points and Willits. On the main line of the Southern Pacific, for example, the parity of rates extends from Mojave almost to the Arizona line, where a difference of 5 cents again appears. This difference of 5 cents gradually increases across the state of Arizona until points just east of Tucson are reached, where the difference of 10 cents appears. A witness for the Northwestern Pacific stated that the parity of rates in the southern part of California is due to water competition through San Pedro and other southern California ports. The rates from the Humboldt Bay points and Willits to these ports are the same, namely, 30 cents. It is significant that to Stockton, Sacramento, and vicinity, the near-by territory alleged to be affected by water competition, the rates from the Humboldt Bay points are $2\frac{1}{2}$ cents over Willits, whereas to the southern California section, the farther distant territory said to be affected by water competition, the rates are the same.

HISTORY OF THE ADJUSTMENT.

Before the completion of the Northwestern Pacific to Humboldt Bay complainants shipped their products by boat to San Francisco Bay ports, and by rail thence to eastern territories. Between Novem-

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ber 1, 1907, and December 3, 1908, there were in effect from the Humboldt Bay points to eastern territories joint through water-and-rail rates as follows: To Missouri River points, 65 cents; to Mississippi River points, 70 cents; and to Chicago common points, 70 cents. On the latter date these rates were canceled and so-called proportional rates, applicable on traffic brought in by water from Humboldt Bay and other northern California ports, were established as follows: To Missouri River points, 50 cents; to Mississippi River points, 55 cents; and to Chicago common points, 55 cents. Shortly after the completion of the Northwestern Pacific to Humboldt Bay, namely, on October 21, 1915, the present joint through all-rail rates to eastern territories were established, the so-called proportional rates from San Francisco Bay ports remaining in effect. The measure of the all-rail rates has been such that since their publication all the lumber traffic to eastern territories has moved all rail. In other words, the all-rail rates have been lower than the cost of water transportation to San Francisco Bay ports, plus the so-called proportional rates beyond.

The rates on California products to eastern defined territories formerly applied only from points on the main trunk lines intermediate to Pacific coast terminals. The Southern Pacific, originally the only trunk line serving California, had routes via Portland, Oreg., Ogden, Utah, and El Paso, Tex., so that what were termed "intermediate points" embraced practically all the main-line points in the state. From time to time points on the lateral branch lines of this railroad were added to the list of "intermediate points." In respect to the rates on lumber, this was done to enable the branch-line mills to meet the competition of the main-line mills. The result of the working out of this policy was to extend the boundaries of the coast group to practically all the lumber-producing branch lines of the Southern Pacific in the state. The longest of the branch lines included in the coast group is that extending from Weed, Cal., through Klamath Falls, Oreg., to Kirk, Oreg., a distance of 126 miles. This branch was constructed as an independent railroad to Grass Lake, Cal., 25 miles, and was later acquired by the Southern Pacific and by that company rebuilt and extended to its present terminus. Practically the only tonnage originated on this branch is lumber, of which there is a heavy movement to eastern territories.

When the Santa Fe built into California, it found the Southern Pacific strongly entrenched in all the traffic-producing sections of the state, especially in respect to the lumber-producing sections. As constructed, the Santa Fe passed through only one lumber-producing point, viz, Storey. It therefore set about to extend its sphere of eastbound traffic possibilities. It first nego-

tiated a reciprocal traffic arrangement with the Southern Pacific. Under this arrangement, the coast group rates from points on the Southern Pacific were made to apply in connection with the Santa Fe and from points on the Santa Fe in connection with the Southern Pacific, the originating line receiving as its division 23 per cent of the Missouri River rate irrespective of the destination of the traffic. On lumber this division is $11\frac{1}{2}$ cents, whether the originating line's haul is 5 miles or 400 miles. While, as a witness for the Santa Fe suggested, this division might appear "a little excessive," the Southern Pacific, having the tonnage and the means of carrying it as far east as Ogden, El Paso, or New Orleans, would agree to nothing less. On the whole, the arrangement has worked out satisfactorily to the Santa Fe, as the division for its long haul to Chicago has been sufficient to leave it compensatory earnings after deducting the Southern Pacific's proportion for originating the business.

To counteract further its eastbound movement of empty cars, the Santa Fe also started negotiations with the Sierra Railway and the Yosemite Valley Railroad to the end of extending the coast group to points on those lines. These two roads, which originate quite a heavy tonnage of lumber, were at that time the only independent lines aside from the Southern Pacific with which the Santa Fe had direct connection in the state. As the result of these negotiations the coast group was extended to take in points on the Sierra Railway as far as Tuolumne, 57 miles from its junction with the Santa Fe, and on the Yosemite Valley Railroad as far as Merced Falls, 24 miles from its junction with the Santa Fe. In the division of the through rates to eastern territories these two lines receive 5 cents and $4\frac{1}{2}$ cents, respectively.

In 1908 the Santa Fe, closely followed by the Southern Pacific, extended the coast group to take in points on the Northwestern Pacific. At that time the northern terminus of this line was Willits, Cal., 140 miles from San Francisco, the western terminus of the Santa Fe, and 86 miles from Santa Rosa, the nearest junction with the Southern Pacific. While the principal traffic which the Santa Fe had in view in taking this action was wine and hops, the new extension of the group covered all commodities, including lumber, of which there was and still is a movement from Willits. In the division of the joint rates the Northwestern Pacific was allowed 23 per cent of the Missouri River rate irrespective of the destination of the traffic, although the Northwestern Pacific, unlike the Southern Pacific, was not in position to "force" it. The Northwestern Pacific had no lines east of San Francisco Bay and, as hereinafter more fully shown, it was controlled jointly by the Santa Fe and Southern Pacific.

In addition to points on the lines above referred to, the coast group was further extended to take in certain points on the McCloud River Railroad, Sunset Railway, Pacific Coast Railway, Pacific Electric Railway, Central California Traction Company, Visalia Electric Railroad, Fresno Interurban Railroad, Modesto & Empire Traction Company, Northern Electric Railway, and Oakland, Antioch & Eastern Railway. In *McCloud River Lumber Co. v. So. Pac. Co.*, 24 I. C. C., 89, the Commission ordered the establishment of joint rates on lumber from McCloud, Cal., on the first-named line, 17 miles from Sisson, Cal., the junction with the Southern Pacific, to eastern defined territories, on the basis of a differential of not exceeding $1\frac{1}{2}$ cents over the coast group rates. For some reason not disclosed by the present record, defendant Southern Pacific Company joined in publishing rates from McCloud which have since been maintained, on the coast group basis. The movement of lumber from McCloud to eastern territories is quite heavy, the decision in the above case indicating that in 1910 it amounted to over 1,200 cars per year. On the Sunset Railway the coast group rates apply from Maricopa, which is 44 miles from Bakersfield, the junction with the Southern Pacific and Santa Fe. This road is controlled jointly by the latter two lines. On the Pacific Coast Railway the coast group rates apply from Palmer, which is 48 miles from San Luis Obispo, the junction with the Southern Pacific. According to their annual reports to the Commission, these two roads originate traffic in lumber and other forest products; and the Pacific Coast Railway's tonnage of such commodities reported as originated traffic is substantial. The remaining roads above named are electric traction lines handling freight as well as passengers, but as the reports of such lines do not show the volume of tonnage handled, or how the tonnage is divided, it is impossible to state whether these particular traction lines originate any lumber or other forest products. The record does not show definitely what division of the joint through rates is allowed to any of the above-named lines.

When the Northwestern Pacific completed its line to Humboldt Bay some discussion arose as to the rates to apply from points north of Willits to eastern territories. For the Santa Fe it was testified that it would have extended the California coast group rates on lumber to points north of Willits at the time the common-point rate on hops was extended, if the Northwestern Pacific line had then been built to Humboldt Bay, provided the Northwestern Pacific would have accepted a 23 per cent division. It was stated the Northwestern Pacific tried to get 25 per cent and the Santa Fe would not pay more than 23 per cent, which, as a witness for the Santa Fe testified, had been the "standardized division for years." It was

being accepted by the Southern Pacific for hauls from as far north as the California-Oregon state line, 400 miles from San Francisco. The average distance from the Humboldt Bay points to San Francisco was and is about 275 miles, and to Santa Rosa about 225 miles. The Northwestern Pacific accepted a mileage prorata on all traffic destined to points in California, with a maximum division of 16 cents and a minimum division of 23 per cent of the through rate on lumber. The lumber traffic from points on its line to state destinations amounts to three times that to eastern defined territories. Notwithstanding all these facts, the rates from the Humboldt Bay points to eastern defined territories were made 10 cents over Willits and the Northwestern Pacific allowed as its proportion this amount plus the "standardized division" of 23 per cent of the coast group-Missouri River rate, or $21\frac{1}{2}$ cents. This division is $5\frac{1}{2}$ cents more than its local rate on lumber from the Humboldt Bay points to San Francisco and more than $5\frac{1}{2}$ cents greater than its average division on traffic to California destinations. The explanation given by the president of the Northwestern Pacific for this unusual fact is that the proprietary lines are "generous" in respect to the division on eastern business.

At this point some reference should be made to the other lines located within the general geographical limits of the coast group, but not included in that basis of rates to eastern defined territories. That coast group basis does not apply from points on the Stirling, Hamilton, and Owenyo branches of the Southern Pacific, but the record contains no evidence of any movement of lumber from points on the latter two branch lines, and nothing to indicate that any part of the movement from the Stirling branch goes to eastern defined territories. Defendants also refer to 15 short roads having direct connection with the Southern Pacific in California, but not included in the coast group. Of these 15 roads, three file no tariffs or reports with the Commission; one files tariffs but no reports; one files reports but no tariffs; eight, according to the record, have on their rails no points shipping lumber in substantial volume, although their annual reports show that they handle, i. e., either originate or receive from the Southern Pacific, some forest products; while the annual reports of the remaining two show that they are owned by lumber companies. Of these two, one, the Arcata & Mad River Railroad, is owned by the Northern Redwood Lumber Company, a complainant in the present case. As the shipping point of this complainant is Essex, on the Northwestern Pacific, it would appear that the railroad referred to is used mostly for the transportation of logs. The other short road, the California Western Railroad & Navigation Company, is owned by the Union Lumber Company, whose mill is located at

Fort Bragg, on the Pacific coast. This road, originally built to carry logs from the timber belt west of Willits to Fort Bragg, has recently been extended to Willits and a connection made with the Northwestern Pacific. Effective April 20, 1917, it was given representation in the joint tariffs of defendants, and through rates on lumber from Fort Bragg to eastern defined territories initiated on basis of the rates in effect from the Humboldt Bay points.

The Western Pacific Railway also reaches some lumber shipping points in the coast group. This line, however, does not participate in the movement of traffic from the Humboldt Bay points, and is not a party defendant to the present complaint.

COMPARISON OF PHYSICAL AND OPERATING CONDITIONS.

The average distances from the Humboldt Bay points to destinations in eastern defined territories are less than 100 miles greater than the average distances from points in the coast group. The distances from some of the Humboldt Bay points are less than the distances from some of the coast group points. The average distances from the Humboldt Bay points are less than the distances from many of the coast group points. The distances from most of the Humboldt Bay points are less than the distances from Kirk, Oreg., the farthest distant point in that group. Considering only the factor of relative distances, therefore, it would appear that the Humboldt Bay points are entitled to be included in the coast group, particularly as the total distances to eastern defined territories range from 1,500 to 3,500 miles, and as the average haul from the Humboldt Bay points is around 2,750 miles, and as competition for business by the originating lines, and the choice of routes open in the tariffs, result in many movements over routes much in excess of the shortest line.

The Northwestern Pacific earnestly contends, however, that the physical and operating conditions on its line north of Willits are substantially dissimilar from those on main and branch lines in the coast group, and that it is therefore justified in "breaking the blanket at Willits." The line from Willits to Shively, approximately 106 miles in length, cost \$14,896,664, or over \$140,000 per mile, and was claimed by the president of the Northwestern Pacific to be the most expensive piece of single-track construction, 100 miles in length, in the United States. The construction of the line, begun in 1907, was suspended from time to time, with the result that it was not completed until 1915. For a distance of 90 miles the right of way was carved out of the side of the Eel River canyon, the clay walls of which have a tendency to slide during the rainy seasons.

The rainfall in this section is very heavy, and, as the river drains quite an extensive watershed, the high water erodes the bank beneath the track. At first these conditions were very troublesome, but by widening the cuts and concreting the tunnels the difficulties have been largely overcome. During the year ended December 31, 1916, the expense of maintenance north of Willits was \$1,209 per mile. While the line has a good deal of curvature, it is practically a water grade line, the maximum grade being about eight-tenths of 1 per cent. South of Willits the maximum grade is about 2 per cent. The grade north of Willits is adverse to the movement of southbound traffic; that south of Willits, in favor of such movement.

The Klamath Falls branch of the Southern Pacific, which is included in the coast group, is 126 miles in length. The record contains no figures as to the cost of this line, but, as it is built over the Siskiyou Mountains, it was an expensive piece of construction. The ruling grade is approximately 4 per cent, which is the most severe grade on the Southern Pacific system. This particular grade is adverse to the northbound movement of traffic, but the line also has numerous grades adverse to the southbound movement of traffic. The use of helper engines is necessary to pull the trains up these grades, and extra empty cars must be added to the trains going downhill in order to provide additional braking power. Similar conditions are present on the main line of the Southern Pacific north of Dunsmuir, Cal., which also runs through the canyon of the Sacramento River and over the Siskiyou Mountains. During the year ended June 30, 1916, the expense of maintenance of way and structures on the Shasta division of the Southern Pacific, which includes the main line from Dunsmuir to Ashland, Oreg., and the Klamath Falls branch, was \$2,020 per mile. During the same year the average expense on all the Pacific system lines of the Southern Pacific was \$1,798 per mile.

Between Bakersfield and Mojave, a distance of 68 miles, the main line of the Southern Pacific runs over the Tehachapi Mountains. This line is also part of the main line of the Santa Fe. The maximum grade is 2.2 per cent, and is adverse to the northbound movement of loaded cars, the direction of traffic routed via Ogden. This line has an unusually large amount of curvature and 18 tunnels. On account of the heavy grades and curves the life of rail on this line is only two or three years. The annual expense of taking care of the track ranges from \$1,800 to \$2,000 per mile.

The record contains no specific evidence in respect to the physical and operating conditions on other lines within the coast group, but the descriptions of the lines above referred to furnish a general idea

of some of the physical and operating conditions which obtain in that group.

The weight to be given to dissimilarities of physical and operating conditions on lines serving competing points of origin depends to a large extent upon the perspective from which they are considered. When considered as a justification for differences in rates to near-by destinations, such conditions are entitled to great weight; but when presented as a justification for differences in rates to farther distant destinations, the weight to be given to such conditions decreases in somewhat the ratio that the distances to the destinations increase. Furthermore, when such conditions are presented as a justification for differences in rates for such long distances as are involved in this case, attention should not be restricted to the first 100 or 200 miles of the hauls. Proportionate consideration must be given to such conditions along all the lines making up the through routes.

More of the lumber traffic from the Humboldt Bay points on the Northwestern Pacific and from the coast group points on all lines moves to eastern defined territories via the Ogden route of the Southern Pacific than via any other route engaged in the traffic. It is therefore desirable to consider some of the physical and operating conditions encountered on the Ogden route. Before leaving the state of California this line begins to ascend the Sierra Nevada Mountains. The maximum eastbound grade through these mountains is 2.37 per cent and the curvature as great as 103 degrees to the mile. To protect the tracks against the average annual snowfall of between 18 and 20 feet it has been necessary to build snowsheds. The total length of these sheds is 29.5 miles, and their cost ranged from \$40,000 to \$80,000 per mile. The annual expense of maintenance of ways and structures through these mountains runs as high as \$2,500 per mile. Proceeding eastward, the line passes through the Nevada desert, and then over the Lucin cut-off across Great Salt Lake. This cut-off is 103 miles in length and cost over \$12,000,000. While the grade on this cut-off is practically *nil* and the transportation expenses, therefore, comparatively low, the annual cost of maintenance is in the neighborhood of \$1,500 per mile.

The record contains no descriptive evidence of the physical and operating conditions along the lines east of Ogden. It is a matter of such common knowledge clearly shown in reports to us, that we must take notice of the fact that traffic, to reach Denver, for example, must encounter the heavy grades and curves incident to the Rocky Mountains, and pass over lines which not only were expensive to build but are costly to maintain. It thus appears that the extraordinary physical and operating conditions are not confined to the first 100 or 200 miles of the haul from either the Humboldt Bay points or from representative coast group points, but are quite preva-

lent throughout considerable portions of the hauls to the western boundary of eastern defined territories.

Viewed from the perspective of the physical and operating conditions along the through routes, ranging from 1,500 to 3,500 miles in length, the initial physical and operating conditions encountered by traffic originating at the Humboldt Bay points do not appear to be substantially dissimilar from those encountered by traffic originating at representative points in the coast group.

The Northwestern Pacific also shows that the density of traffic on its line, particularly that part thereof north of Willits, is lighter than that on the Santa Fe or Southern Pacific. As the Northwestern Pacific line north of Willits is only a little over a year old, it could not be expected to have developed as heavy a traffic density as the older lines. To be of very much assistance in this case, however, the comparison should be between the densities per mile of road of the particular lines participating in the traffic up to the junction points where the movements from the Humboldt Bay points and representative points in the coast group converge. As between the Humboldt Bay points and the Klamath Falls branch points, for example, this converging point is Roseville on traffic routed via the Southern Pacific. The record shows the gross ton-miles on the Southern Pacific line from Kirk to Roseville, but it does not show the same information for the main line of the Northwestern Pacific to Schellville or Santa Rosa, or for the main line of the Southern Pacific from those junctions to Roseville. If this information were available, it would have to be considered in connection with the density of traffic along all the lines making up the through routes to eastern defined territories. It may be stated, however, that during the year ended December 31, 1916, the traffic density on the Northwestern Pacific, including the main line, branch lines, and narrow-gauge lines, but not including the isolated line from Albion to Christine, was 470,403 gross ton-miles per mile of road, while that on the Klamath Falls branch of the Southern Pacific was 501,381 gross ton-miles per mile of road. During the same year the traffic density on the Northwestern Pacific line north of Willits compared as follows with that on lines included, wholly or partly, in the coast group:

Northwestern Pacific Railroad:	Tons of revenue freight carried 1 mile per mile of road.
Lines north of Willits-----	157, 927
Lines south of Willits-----	189, 069
McCloud River Railroad -----	155, 586
Sierra Railway-----	101, 281
Sunset Railway -----	338, 529
Yosemite Valley Railroad-----	94, 385
Pacific Coast Railway-----	42, 931

The above table shows that the Northwestern Pacific line north of Willits, although then open only a little over a year, had already developed a traffic density which compared favorably with that on lines now included wholly or partly in the coast group. Furthermore, as the general movement of freight traffic on the Northwestern Pacific is southbound, a comparison of the density north and south of Willits indicates that most of the traffic handled south of Willits originates north of Willits.

In connection with the general question of comparative conditions, reference should again be made to the fact that the Northwestern Pacific's basic proportion of joint rates to points in California on the Southern Pacific and Santa Fe is a mileage prorate. In other words, on short-haul traffic, where substantial dissimilarities of conditions are generally emphasized in the fixing of divisions, the Northwestern Pacific is allowed no more per mile for its haul to the junction points, even though the traffic originates north of Willits, than the Southern Pacific and Santa Fe receive for their hauls from the junction points to destination.

THE NORTHWESTERN PACIFIC RAILROAD.

In 1901-2 there were three short roads, parts of which were narrow-gauge line, traversing the territory immediately north of San Francisco Bay. Together these roads extended as far north as Willits, about 140 miles from San Francisco. At the same time there were two short logging roads, which together extended from Trinidad and Samoa on Humboldt Bay to Shively, about 75 miles to the south. There was also a short logging road extending from Albion on the Pacific coast south of Humboldt Bay, a few miles to the southeast. Of these six lines, four were not operating and two were barely making expenses. They were all in a badly run-down condition. The Southern Pacific secured control of the lines up to Willits, and was contemplating an extension to Humboldt Bay to tap the vast forests of redwood timber in that vicinity, when the Santa Fe became interested in the same project. The Santa Fe purchased the Albion line and one of the Humboldt Bay logging roads, an option which the Southern Pacific had on the latter having expired. While the president of the Santa Fe was looking over the other logging road, the president of the Southern Pacific purchased it on a Sunday without having seen it. The purchase price was "more than a million dollars," which was a great deal more than its general balance sheet of June 30, 1906, showed as current assets in road and equipment. A race then started between the two trunk lines to connect their purchased roads with San Francisco. The Southern Pacific made a

survey along the north fork of the Eel River; the Santa Fe along the south fork of the same river. Before very much construction work had been done, however, the two lines agreed to pool their interests and build but one line.

The six short roads referred to and the Northwestern Pacific Railway Company, which seems to have been a sort of temporary holding company of the stock of the lines purchased by the Southern Pacific, were consolidated and incorporated under the name of the Northwestern Pacific Railroad Company. For the constituent lines the Southern Pacific and Santa Fe had paid an aggregate of \$7,655,503 in cash and had assumed \$6,750,000 of 5 per cent outstanding bonds, although the record indicates that some if not all of the roads were bonded "for practically their full value." Shortly after its incorporation the new company authorized an issue of \$35,000,000 in 4½ per cent bonds, of which \$23,196,000 was outstanding on June 30, 1916, having been sold to or through the Southern Pacific at 95. The laws of California prohibited the issuance of bonds in an amount greater than the authorized capital stock, so \$35,000,000 in stock was issued. Of this amount \$17,499,500 each was turned over to the two proprietary lines, and \$1,000 reserved for directors. The control of the company was placed in the hands of nine directors, four each appointed by the two proprietary lines, and the neutral ninth by the eight so appointed. To date the directors appointed by the two proprietary lines have been traffic and executive officials of those lines in San Francisco.

A great deal of evidence was introduced by the president and other witnesses for the Northwestern Pacific to show that the property has not turned out to be a profitable investment to its owners from a financial standpoint, and that its present financial condition is such that it can not stand a reduction in the present "generous" division given to it out of the through rates. In view of its history and its relation to the Southern Pacific and Santa Fe, the Northwestern Pacific must be considered a part of those systems rather than an independent line. *C., M. & St. P. Ry. Co. v. Minneapolis Civic & Commerce Asso.*, 247 U. S., 490; *Lumber Rates from Memphis to New Orleans*, 27 I. C. C., 471; *Traffic Bureau of Knoxville v. C., N. O. & T. P. Ry. Co.*, 37 I. C. C., 687; and *Richmond Chamber of Commerce v. S. A. L. Ry.*, 44 I. C. C., 455. The Southern Pacific and Santa Fe can not claim the right to earn a profit from every mile, section, or other part into which their respective roads might be divided, hence they can not claim the right to make a separate profit from the Northwestern Pacific, segregated from the rest of their systems. *Billings Chamber of Commerce v. C., B. & Q. R. R.*, 19 I. C. C., 71, 75; *Louisville & Nashville R. R. Coal & Coke Rates*, 26 I. C. C., 51 I. C. C.

20, 30; *Wellington Mines Co. v. C. & S. Ry. Co.*, 39 I. C. C., 202, 205; *Stonega Coke & Coal Co. v. L. & N. R. R. Co.*, 39 I. C. C., 523, 542. Furthermore, there is no attack here upon the local rates or divisions which the Northwestern Pacific receives, and consequently the question whether they are reasonable or unreasonable is not in issue. *McGowan-Foshee Lumber Co. v. F., A. & G. R. R. Co.*, 43 I. C. C., 581, 584.

Since its incorporation, the original lines of the Northwestern Pacific have been practically rebuilt, the connecting line to Humboldt Bay has been completed, and the number and efficiency of the rolling stock and ferry steamers increased. Upon the whole, the railroad has had a favorable return from its operation. Up to June 30, 1916, it had credited to profit and loss approximately \$3,500,000, most of which had been put back into the property. Even during the year ended on the above date, the first full year after the completion of the new line to Humboldt Bay and the first full year that the interest (amounting to over \$600,000) on the bonds issued to construct that line was debited to the income account, it credited to profit and loss over \$85,000. To use the words of the president in his annual report for that year, this showing "augurs well for the future of the property."

In addition to the foregoing results, the proprietary lines have been furnished with an ever increasing amount of new tonnage. During the year ended December 31, 1916, the Northwestern Pacific originated 4,284 cars of commodities which went to destinations east of Ogden. After deducting the "generous" proportion which accrued to the Northwestern Pacific, the Santa Fe, Southern Pacific, and their eastern connections received from this traffic \$1,121,552. The Northwestern Pacific also originates a heavy tonnage which finds destination in California and states intermediate to eastern defined territories, on which either the Southern Pacific or Santa Fe secures the long haul. These facts prove that a separate balance sheet or financial report does not portray the true value of the Northwestern Pacific as a part of the Southern Pacific and Santa Fe systems.

From the whole record in this case it is clear that before the opening of the Northwestern Pacific line to Humboldt Bay the Southern Pacific and Santa Fe had followed a rather consistent policy, virtual, if inarticulate, in extending the coast group basis of rates to all points located fairly within the general geographical and distance limits of the blanket and producing lumber and other forest products in substantial volume, whether such points were served by their own main lines or branch lines or by the lines of independent common-carrier roads with which they had direct connection. In making this

statement of the situation, the fact that the Southern Pacific did not apply the coast group basis of rates from points on certain proprietary and nonproprietary lines has not been overlooked. On the present record, those instances must be regarded as unexplained exceptions to the policy referred to, not as indications of its non-existence. The working out of that policy has come to this: Having developed a system of rates which disregards differences in distance and dissimilarities in physical and operating conditions, these two trunk lines have lost their right to emphasize such factors in determining the basis of rates to apply from points on newly constructed lines. This is especially true of the Northwestern Pacific extension to the Humboldt Bay points. That line is owned and controlled by the Southern Pacific and Santa Fe, the extension was built for the express purpose of developing the lumber traffic, and the lumber-producing points which it brought into rail touch with eastern defined territories are fairly within the geographical and distance limits of the coast group.

On principle, the situation presented here is not unlike that considered in numerous other cases where it appeared that the defendant carriers had disregarded distance and other factors and blanketed an extensive producing territory served by their own lines and in some instances by independent lines as well, but had refused to accord similar treatment to points served by other proprietary or nonproprietary lines within the general geographical and distance limits of the blanket territory. *Ladd & Co. v. Gould Southwestern Ry. Co.*, 36 I. C. C., 179; *Joint Rates with the Washington Western Railway*, 41 I. C. C., 649; *Lutcher & Moore Lumber Co. v. T. & N. O. R. R. Co.*, 42 I. C. C., 88; *McGowan-Foshee Lumber Co., supra*. It was held in those cases that carriers must not discriminate in the manner indicated. To reach eastern defined territories, traffic from the Humboldt Bay points and from all the heavy producing points on the Southern Pacific north of Sacramento must move south before it moves east, and as the distances from the Humboldt Bay points to Roseville or Stockton are within the distances from the Southern Pacific points referred to to the same points, which are points where traffic from the two producing sections converge when routed via the Southern Pacific and Santa Fe, respectively, the Humboldt Bay points may be said to be fairly within the geographical and distance limits of the blanket. To state the situation in an illustrative manner, the Humboldt Bay points are well within an arc drawn around Roseville or Stockton and through Kirk, Oreg.

We therefore find and conclude that the rates on lumber and other forest products in carloads from the Humboldt Bay points to defined territories, Colorado common points and east, maintained by the railroad corporations, defendants herein, at the time of the taking over of their properties under federal control, subjected and in the future will subject complainants and the Humboldt Bay points to undue and unreasonable prejudice and disadvantage to the extent that they exceeded or might afterwards exceed the rates contemporaneously in effect by said defendants from the California coast group points to the same destinations.

UNJUST DISCRIMINATION.

In the complaint it is claimed that the rates charged for the transportation of lumber and other forest products from the mills of complainants to eastern defined territories violate section 2 of the act to regulate commerce in that they are unjustly discriminatory against the complainants. The facts relied upon to establish the unjust discrimination are those which have already been examined in this report.

While a state of facts which would show an undue or unreasonable prejudice or disadvantage under section 3 of the act might also constitute an unjust discrimination and therefore be a violation of section 2 of the act, in this case, the gist of which is an alleged undue and unreasonable prejudice or disadvantage as between localities, we do not find that section 2 has been violated. The purpose of section 2 of the act is to enforce equality as between shippers, and to prohibit any rebate or other device by which two shippers, shipping over the same line, the same distance, under the same circumstances of carriage are compelled to pay different prices therefor. *Wight v. U. S.*, 167 U. S., 512, 517. Section 2 is primarily directed against discrimination between shippers located in the same community. *Richmond Chamber of Commerce v. S. A. L. Ry.*, 44 I. C. C., 455, 464. The complaint is not sustained in this regard.

REASONABLENESS OF THE RATES FROM HUMBOLDT BAY POINTS.

While complainants are chiefly disturbed because of their rate adjustment as related to the charges made against their competitors in the California coast group, the complaint challenges the reasonableness of the rates charged from Humboldt Bay points, and alleges a violation of section 1 of the act to regulate commerce, and that issue was not abandoned. That question will be examined in the light of

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the record. What has been said as to the physical and operating circumstances and commercial conditions under which the traffic moves need not be repeated.

Earlier herein we have shown the rates carried from California coast group points and from Humboldt Bay points to Denver, Colo., a representative consuming market, and have stated that the relationship is fairly typical of the eastern defined territories beyond that city. These rates are all voluntary, in that they were made by defendants without compulsion of law; how far competitive conditions may have influenced them has been stated.

The following table, based upon an exhibit of the defendants, corrected in certain respects as to mileage, shows the rates prior to June 25, 1918, in cents per 100 pounds for lumber and other forest products, exclusive of shingles, the ton-mile revenue in mills, and car-mile revenue in cents, and the distance in miles from Eureka, an important Humboldt Bay shipping point, to certain representative destinations in eastern defined territories:

¹ Proportional rate.

If Eureka had been upon the same rate basis as points in the California coast group, the corresponding rates, ton-mile, and car-mile revenues would thus appear:

¹ Proportional rate.

The rates carried from the California coast group apply from Willits, on the Northwestern Pacific, north of Willits from the Humboldt Bay points at which complainants' mills are located the 10 cents differential applies. From Willits to the same eastern destinations, the rates, revenue per ton-mile and per car-mile, and mileage are as follows:

¹ Proportional rate.

The three foregoing tables are taken from the defendants' exhibit last above mentioned. In them the defendants have used an average car loading from Willits of 20.7 tons, and from Eureka of 20.6 tons. The evidence is in conflict as to the average car loading of the California woods, and the car-mile revenue shown is to be studied bearing this opposition of testimony in mind. There was evidence that the average weight of 82 cars of redwood lumber shipped by one Humboldt Bay complainant was 23 tons. The minimum weight, 15 tons, is the same for redwood and pine lumber. White-pine lumber, which furnishes a large proportion of the total shipped from the California coast group, and redwood lumber are of about equal weight.

An exhibit of the defendants purports to give the weighted average of shipments and the average distances from the California coast group points to given destinations in eastern defined territories, together with the earnings per ton-mile in mills and per car-mile in cents, based on an average loading of 23.2 tons per car, as follows:

¹ Proportional rate.

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We have shown the revenue from a typical Humboldt Bay point, from Willits where "the blanket breaks," and from the average of the California coast group points to destinations in eastern defined territories, as stated in exhibits of the defendants. We have also shown that the California coast group rates apply from Kirk, Oreg., at the northern edge of the blanketed territory, to the same destinations. It has already been shown in this report that a greater proportion of the lumber from Humboldt Bay points moves east of St. Louis than from Kirk. The average movement from Kirk is therefore a shorter distance than from Humboldt Bay. From Kirk the mileage, rates, and per ton-mile and car-mile earnings are as stated below. The car loading assumed is the same as that used by defendants in their exhibit from which the table last above is taken.

¹ Proportional rate.

In the foregoing tables short-line distances have been used. The routes open under the tariffs on file are, many of them, much more circuitous. The average revenues per ton-mile and per car-mile, if worked out over these longer lines, would be correspondingly less than those shown in the tables. There was active competition among the originating carriers for the business, and the average revenues received from lumber originating in the California coast group were therefore less than the sums shown, which are based upon the shortest route carried in the tariffs.

In *Oregon & Washington Lumber Mfrs. Assn. v. U. P. R. R. Co.*, 14 I. C. C., 1, the reasonableness of rates on lumber from the North Pacific coast group was before us. As a result of the determination in that case, rates were established as reasonable from the North Pacific coast group to the various eastern defined territories. Portland, Oreg., was stated as a fairly representative point for the state of Oregon. A rate of 50 cents was prescribed from Portland to Omaha, a distance of 1,799 miles, which is equivalent to 5.56 mills per ton-mile. The same rate is carried from Vancouver, British Columbia, to Ashland, Oreg. It applies from Astoria, Oreg., to Omaha, 51 I. C. C.

1,899 miles, and to Kansas City, 2,017 miles, and yields, respectively, 5.23 mills and 4.95 mills per ton-mile. Because of the size of the blanketed originating territory, still longer hauls to Omaha and Kansas City, with correspondingly lower ton-mile earnings, might be cited. A rate of 45 cents was prescribed from points in the North Pacific coast group to St. Paul and Minneapolis, Minn. The yield from Seattle, Wash., 1,776 miles, is 5.07 mills per ton-mile; from Portland, 1,814 miles, is 4.96 mills; and from Astoria, 1,914 miles, is 4.70 mills. The relationship to eastern defined territories is the same as from the California coast group. Principally fir, spruce, hemlock, and pine move under these rates from the North Pacific coast group. As the average haul of redwood, which furnishes the bulk of the movement from the Humboldt Bay group, is to more distant eastern markets than the average movement of woods from either the California coast or North Pacific coast groups, it therefore yields a proportionately larger gross revenue to the carriers.

As appears in *Oregon & Washington Lumber Mfrs. Asso. v. S. P. Co.*, 21 I. C. C., 389, 395, the average rate for the transportation of all lumber from the Willamette Valley, in Oregon, over the line of the Southern Pacific Company to San Francisco, was between 6 and 7 mills per ton-mile; and on rough green fir lumber a rate of \$3.50 per ton from stations on the Oregon main line in the Willamette Valley was prescribed as reasonable. This was equivalent to 5.63 mills per ton-mile, or 16.9 cents per car-mile, for an average haul of but 622 miles.

The effective periods of our orders in the *Oregon & Washington* and *Willamette Valley Lumber Cases* have long since expired, but the rates therein prescribed as reasonable were maintained until increased pursuant to General Order No. 28, on June 25, 1918.

Upon the record we find and conclude that the rates of the defendant railroads, from Humboldt Bay points on lumber and other forest products, to eastern defined territories, Colorado common points and east, at the time of the taking over of their properties under federal control, were unjust and unreasonable to the extent that they exceeded the rates on such commodities contemporaneously maintained by the defendant railroads from points in the California coast group to the same destinations, in violation of section 1 of the act to regulate commerce.

THE RATES UNDER FEDERAL CONTROL.

What has preceded relates to the operations of defendants on their own behalf and not under federal control. At the time that this matter was submitted the defendants were under federal control,

with the exception of 49 named in the footnote on this page.¹ However, the carriers named as not under federal control and the Director General of Railroads, operating the lines of the other defendants, have since June 25, 1918, participated and do now participate in through rates for the transportation of lumber and other forest products accordingly as their lines of railway run from all of the California points mentioned in the complaint to the eastern defined territories which are uniformly 5 cents per 100 pounds in excess of the rates shown in this report which were charged under private control. This increase was effectuated, by compliance with General Order No. 28 of the Director General of Railroads, to the federally controlled railroads, and under fifteenth section permissions granted by the Commission to all the defendants at the request of the Director General for the purposes stated in the certificate made by him—

* * * that in order to defray the expenses of federal control and operation fairly chargeable to railway operating expenses, and also to pay railway tax accruals other than war taxes, net rents for joint facilities and equipment, and compensation to the carriers, operating as a unit, it is necessary to increase the railway operating revenues; and,

Whereas the public interest requires that a general advance in freight rates * * * on all traffic carried by all railroad * * * lines taken under federal control * * * shall be made by initiating the necessary rates * * * charges * * * by filing the same with the Interstate Commerce Commission.

¹ Arkansas & Louisiana Midland Railway Company; Baltimore, Chesapeake & Atlantic Railway Company; Birmingham & Southeastern Railway Company; Canadian Government Railways (lines Armstrong, Ontario, and east thereof); Canadian Northern Railway Company; Chicago Lighterage Company of Illinois; Colorado, Kansas & Oklahoma Railroad Company; Colorado Midland Railway Company (Geo. W. Vallery, receiver); Delaware & Northern Railroad Company; Dominion Atlantic Railway Company; Fort Smith & Western Railroad Company (Arthur L. Mills, receiver); Georgia & Florida Railway (L. M. Williams, W. R. Sullivan, and Harry R. Warfield, receivers); Georgia Southwestern & Gulf Railroad Company; Grand Rapids, Grand Haven & Muskegon Railway Company; Grand Trunk Railway Company of Canada; Great Western Railway Company; Gulf, Texas & Western Railway Company; Hagerstown & Frederick Railway Company; Kane & Elk Railroad Company; Kansas City & Memphis Railway Company (J. E. Felker & R. C. Bright, receivers); Lackawanna & Wyoming Valley Railroad Company; Louisiana & Pine Bluff Railway Company; Macon & Birmingham Railway Company (J. B. Munson, receiver); Maryland & Pennsylvania Railroad Company; Maryland, Delaware & Virginia Railway Company; Moshassuck Valley Railroad Company; Mt. Jewett, Kinzua & Ritterville Railroad Company; New Mexico Central Railroad Company (Ralph C. Ely, receiver); New York & Pennsylvania Railway Company; Ocilla Southern Railroad Company; Oklahoma, New Mexico & Pacific Railway Company; Okmulgee Northern Railway Company; Pittsburg, Shawmut & Northern Railroad Company (Frank Sullivan Smith, receiver); Quebec, Montreal & Southern Railroad Company; Rio Grande & Eagle Pass Railway Company; St. Louis, El Reno & Western Railway Company (Arthur L. Mills, receiver); Salt Lake, Garfield & Western Railway Company; South Georgia Railway Company; Southwestern Railway Company; Texas Mexican Railway Company; Texas, Oklahoma & Eastern Railroad Company; Texas State Railroad; Thousand Islands Railway Company; Toronto, Hamilton & Buffalo Railway Company; Washington, Baltimore & Annapolis Electric Railroad Company; Western Allegheny Railroad Company; Wilkes-Barre & Hazelton Railway Company; Wellsville & Buffalo Railroad Corporation; Youngstown & Ohio River Railroad Company.

The order was that—

Interstate commodity rates on the following articles in carloads shall be increased by the amounts set opposite each:

Commodities.	Increases.
Lumber and articles taking same rates or arbitraries over lumber rates; also other forest products, rates on which are not higher than on lumber-----	Twenty-five (25%) per cent, but not exceeding an increase of five cents per 100 pounds.

Under the special rules of practice of the Commission, complainants filed a supplemental complaint which brought in the Director General as a defendant. The averments of the original complaint were repeated. Complainants pleaded the issuance of General Order No. 1 of the Director General of Railroads, of December 29, 1917, to the effect that all transportation systems covered by the proclamation of the President should be operated as a national system of transportation, the common and national needs being in all instances held paramount to any actual or supposed corporate advantage. The increased rates initiated pursuant to General Order No. 28 were appropriately averred, and it was alleged that the differentials which have already been referred to still applied from points north of Willits on the line of the Northwestern Pacific. The complainants alleged that by reason of the facts stated in the supplemental and in the original complaint the rates then charged for the transportation of lumber and other forest products from their mills to the destinations mentioned in the complaint were, when exacted, and still are, arbitrary, excessive, unjust, and unreasonable, both inherently and relatively in comparison with rates to the same destinations from points in the California coast group, to the extent that they then exceeded and now exceed the California coast group rates to such destinations, in violation of section 1 of the act to regulate commerce, and of section 10 of the federal control act, and were unduly preferential and prejudicial in violation of section 3, and subjected complainants to an unjust discrimination in violation of section 2 of the act to regulate commerce.

The answer of the Director General admitted the exercise of his powers, and the making of General Order No. 28, and averred that all rates in force and complained of were established pursuant to that order. The Director General claimed in his answer that the lawfulness of these rates can be determined alone by the provisions of the federal control act, and denied that any of the rates violate the provisions of that act.

Upon argument, one of counsel for the Director General stated:

I desire to say that so far as it is within my power to do so, I stand entirely upon the federal control act, and I shall contend * * * that there no longer exists any such ground of challenge to a rate as discrimination, or that the shippers have been subjected to undue prejudice and disadvantage.

* * * * *

Furthermore, I shall contend that this Commission is without power or jurisdiction to at this time adjudicate this case, in view of the rate instituted by the President in General Order No. 28.

He contended that as to any subject matter treated by the federal control act any preexisting statute inconsistent therewith was repealed by implication.

Subsequently, however, the position of the Railroad Administration as thus announced was modified by the same counsel. He stated his contention that under the federal control act the grounds expressed of challenge of rates are two; that they are unreasonable and unjust; that no longer is there such an expressed ground of challenge, *eo nomine*, as a discrimination, or that a given rate subjects shippers to undue prejudice and disadvantage. He stated, however, that the scope of the evidence before the Commission may be broadened further than it ever was before by virtue of section 10 of the federal control act; that he did not contend that evidence that could have been admitted into the record before as perhaps establishing an expressed ground of challenge as discriminatory, might not now be received and be entitled to consideration by the Commission in determining the broad question of unreasonableness and unjustness of rates under the federal control act.

Subsequently, the assistant general counsel of the Railroad Administration stated:

It does not seem to me that there can be any misunderstanding; that is, that the Commission has jurisdiction to determine the justness and reasonableness of any rate under attack, not only with reference to its measure but with reference to its relationship. We have not denied that for one minute. We think that the Commission passing upon that issue in either one of its aspects, either relatively to the measure or relatively to the connection of one rate with the other is entitled to give any evidence which is presented, it does not matter what that evidence is, the weight that it thinks should be attached to that evidence. We think that the Commission, having done that, is entitled to make such an order as it would have made under the act to regulate commerce, that being the express provision of section 10 of the federal control act; and my belief is that there are but two material questions here, perhaps only one material question, and that is, first, as to whether—and it may not be so important to decide that—the examiner was warranted in reaching the conclusion at which he arrived upon the evidence that was presented prior to the federal control act; and, second—and that is an important question—whether or not there is any evidence here which would justify this Commission in condemning the rates that are involved, either because they are too high or because they are in improper relationship with some other rates.

He stated the question to be simply what conclusions are fairly deducible from the evidence—not as to the Commission's jurisdiction or power, or as to the form of the order it may make, but as to where the evidence will get the Commission in finally considering the case.

The question was asked from the bench:

Q. That would seem to lead to this as being the thought in your mind, that none of the cases which have been heard before the Commission on which the record has been completed could result in a determination in favor of the complainant, even in a case where you stipulate into the record the Director General's Order 28 and certificate on which it is based. Is that right?

A. That is correct, Mr. Commissioner. * * *

We are to consider whether the present rates under review are unjust or unreasonable, either in and of themselves or in their relation to other rates made by the defendants. The federal control act states the rules which govern rates made by the Director General, and the act to regulate commerce governs the defendants herein that are not under federal control.

As was stated in *Willamette Valley Lumbermen's Asso. v. S. P. Co.*, *supra*:

Rates made by the President must be reasonable in and of themselves and they must be relatively just in view of the conditions enumerated in the control act and in view of other circumstances and conditions.

We have examined the whole record with particular reference to the rates under federal control. We have considered the commercial, operating, and physical conditions shown in the record. As none of the defendant railroad corporations asked to supplement the record which was made prior to federal control or to correct the record as to any fact, it may be assumed that the conditions shown in the record, and which furnish the basis for this report, substantially apply down to the instant federal control became a fact. It is not suggested by the Director General or by any of the other defendants that since federal control was assumed there has been any material change in the facts with respect to operating or other conditions, except as certified by the Director General in General Order No. 28. What is shown in support of that increase tends to establish that the underlying causes were general, and did not relate particularly to the railroad lines under consideration herein, or any of them, or to the transportation of the commodities before us.

In the report of the Director General of Railroads to the President, September 3, 1918, it is stated under the heading "The Advance in Freight and Passenger Rates":

To provide for the increase in wages allowed, the higher prices that must be paid for all supplies, and the rising costs of operation generally, an average advance of 25 per cent in freight rates has been ordered * * *.

It is assumed that these advances in freight and passenger rates will increase the net operating revenue of the railroads by an amount that is about equal to the greater cost of operation due to increased wages and increased cost of fuel and all railroad supplies, but this assumption is more or less conjectural, as it is impossible to say whether the higher rates charged will have the effect of reducing the traffic. Thus far such an effect has not been noticeable, at least in the case of the passenger traffic * * *.

The reasons which lead up to the increase in rates, therefore, in the absence of any counter showing, are to be taken as applying alike and equally to the lines of railroad under federal control. We take it from the record that there is no change in the situation developed by the testimony since the Director General assumed control of the principal defendants so far as the physical movement of traffic generally, or of lumber and other forest products in particular, may be concerned, or with respect to the rate adjustment applicable to such movement by the complainants from their California mills to the territory embraced in the complaint or the effect of such adjustment upon commercial conditions, except that there has been the uniform increase of 5 cents per 100 pounds already mentioned.

The questions of the separate identity of the Northwestern Pacific Railroad or its intercorporate relations with other defendants can scarcely arise during the period of federal control. General Order, No. 1, of the Director General of Railroads, December 29, 1917, in part directs that:

3. All transportation systems covered by said proclamation and order (of the President) shall be operated as a national system of transportation, the common and national needs being in all instances held paramount to any actual or supposed corporate advantage. All terminals, ports, locomotives, rolling stock, and other transportation facilities are to be fully utilized to carry out this purpose without regard to ownership.

4. The designation of routes by shippers is to be disregarded when speed and efficiency of transportation service may thus be promoted.

5. Traffic agreements between carriers must not be permitted to interfere with expeditious movements.

The Northwestern Pacific, Southern Pacific Company, the Atchison, Topeka & Santa Fe Railway, and their federally controlled eastern connections are, for all present purposes, a single line. *Kaw River Sand & Material Co. v. A., T. & S. F. Ry. Co.*, 51 I. C. C., 350. Indeed, by section 10 of the federal control act, we are in terms required, in this very kind of a proceeding, to—

* * * give due consideration to the fact that the transportation systems are being operated under a unified and coordinated national control and not in competition.

It may be questioned whether the Director General, by his Order No. 28, has initiated the entire amount of every rate now charged

from each of the groups before us, or whether he had merely initiated an increase which is superimposed alike upon all existing rates. Is each entire rate to be tested and reviewed under the federal control act, or does that act control merely the portion of the rate represented by the increase made in compliance with the general order?

If it be taken that the action of the Director General merely imposed a surcharge, and that only the amount of the increase is within the purview of the federal control act, then it is to be stated that the complainants do not challenge the amount of the additional charge and that the increase applies equally to each of the rates before us and does not alter their general effect. As the rate basis existing was unjust and unreasonable when the federally controlled railroads complied with the general order, the imposition of a flat rate increase would not divest the rate structure of its obnoxious features. *Willamette Valley Lumbermen's Asso. v. S. P. Co., supra.*

Should it be taken that the whole of each of the rates is to be considered as initiated by the Director General and therefore to be governed by the standards of the federal control act, then in reviewing the justness and reasonableness of these rates, as directed by section 10 of that act, we have before us the Director General's rates on the commodities under examination from a blanketed area extending several hundred miles in length which is contiguous to the Humboldt Bay group, and eastward from the western junctions and gateways over the same lines to the same eastern defined territories. We also have before us his charges on similar commodities from other sections of the Pacific coast to the same destinations. The record shows sufficiently the physical, operating, and traffic characteristics of the lines under which these rates apply. The Director General has put all these lines under a uniform and coordinated national control, and they are not competitive. If the Director General is to be considered as having initiated the whole of these rates, then in the absence of a contrary showing the rates considered as established by him from the California coast group and from other sections of the Pacific coast to these eastern destinations may be taken as showing his estimate of the cost and value of his services, and as competent and cogent evidence as to the absolute and relative justness and reasonableness of the rates now charged from the Humboldt Bay group, transportation conditions being taken into account. If the Director General is to be considered as initiating the whole of these rates, then when he made them from the Oregon line to the Mexican border, he was under obligation to see that they were themselves reasonable and just, and under a correlative obligation to establish rates from the Humboldt Bay points which were relatively rea-

sonable and just as compared with the controlling rates from the huge blanketed contiguous and competitive area. Tested by this standard the present lumber rates from Humboldt Bay points to the destinations in question do not conform to the requirement of the federal control act that all rates shall be just and reasonable.

Upon argument, on behalf of the Director General we were asked to take judicial notice that the lumber business, as, in fact, all business, is not conducted as it was before the United States was drawn into the European war; that shipments are made under permits issued by the federal government; that prices are much above normal, and that no matter how high the freight rate the shipper does a profitable business; and that many embargoes prevent shipments to various points. Counsel contended broadly:

The importance of the relationship of rates and rate adjustments has disappeared to a very large extent for the period of the war, and these cases are going to be decided by this Commission while the war is in progress and while we are in this abnormal situation that the war has brought about.

Even if all the abnormal conditions were as counsel for the Director General stated them, the continuance of an unjust and unreasonable rate situation and relationship would not thereby be warranted. Indeed, the more abnormal other conditions the greater would seem to be the need for unswerving fidelity to the standards of justness and reasonableness in transportation charges as between competing persons, localities, and commodities. This principle was recognized by Congress. The federal control act was enacted in the midst of war and while Congress was daily dealing with the abnormal commercial conditions caused by the war. Notwithstanding the fact we were at war and commercial conditions were abnormal, Congress expressly prescribed that all rates under federal control must be just and reasonable, and thus foreclosed the contention that any person, place, or commodity could be deprived of just and reasonable rates because of the war or conditions growing out of it. Nothing in the record indicates that it is necessary that the complainants must be deprived of just and reasonable rates and rate relationships in order to effectuate any of the purposes of federal control.

The submission herein was made prior to the signing of the armistice with the enemies of the United States. The federal control act, we recall, is by section 16 thereof—

* * * expressly declared to be emergency legislation enacted to meet conditions growing out of war.

If, under the doctrine of judicial notice, we are to take notice of matters which are, or ought to be, generally known within the limits

of our jurisdiction as equivalent to proof, and of equal force with and as standing for the same thing as evidence, we must consider the contemporaneous effect of war upon general conditions. *15 Ruling Case Law*, p. 1090. We must notice that, as stated by the President to the Congress, with the signing of the armistice, "The war thus comes to an end." We must notice that with suddenness and as of one accord the nation has turned from the active waging of war to the demobilization of military forces and the return of industries to their accustomed channels. No more than is necessary should war conditions be permitted to deprive any individual or locality of that equality of opportunity in respect to transportation, which is insured alike by our fundamental economic policy and by the law.

From a consideration of all the facts and circumstances of record, as to the present rates charged for the transportation of lumber and other forest products, from Humboldt Bay points to destinations in eastern defined territories, Colorado common points and east, we find and conclude that as to defendants not under federal control, that while not discriminatory within the meaning of section 2 of the act to regulate commerce, such rates are, and in the future will be, unreasonable, in violation of section 1 of the act to regulate commerce, and subject complainants and the Humboldt Bay points to undue and unreasonable prejudice and disadvantage, in violation of section 3 of the act to regulate commerce, to the extent that they exceed the rates contemporaneously in effect from California coast group points to the same destinations. We also find and conclude, as to the defendant carriers under federal control and as to the Director General of Railroads, that the present rates maintained over federally controlled railroads or in connection with such of the defendants as are not under federal control, are, and for the future will be, unjust and unreasonable in violation of section 10 of the federal control act, to the extent that they exceed the rates now in effect, or which may hereafter be maintained, from California coast group points to the same destinations.

An order will be issued to carry out the findings made herein.

51 I. C. C.

CASES DISPOSED OF BY THE COMMISSION WITHOUT PRINTED REPORT DURING THE TIME COVERED BY THIS VOLUME.

1486. *IN RE DRAYAGE*. Order instituted by the Commission with a view to ascertaining to what extent drayage is performed by carriers or by agents under the employment of carriers, and to what extent allowances are made to shippers for the performance of this service. *W. D. Eaton* for C., B. & Q. R. R. Co. *N. S. Brown* and *H. E. Watts* for Wabash R. R. Co. Good cause appearing therefor, proceeding discontinued October 31, 1918.

3022. *IN RE ALLOWANCES FOR TRANSFER BY WATER AT NEW YORK CITY*. Order instituted with view to conducting investigation. Proceeding discontinued October 31, 1918.

3606. *LEE & SONS Co., Inc., v. S. A. L. Ry.* Cancellation of rule providing for absorption of connecting line switching charges at Richmond, Va., on carload shipments of fertilizer particularly. *S. S. P. Patteson* and *C. S. Drayton* for complainant. *F. W. Gwathmey*, *H. M. Boykin*, and *J. H. Ketner* for defendant. Good cause appearing therefor, complaint dismissed August 1, 1918.

6935. *CHELSEA REFINING Co. et al. v. A., T. & S. F. Ry. Co. et al.* Rates on sulphuric acid, in tank cars, from Kansas City, Mo., and other points to various oil-refining points in Oklahoma. *J. S. Burchmore* and *L. M. Walter* for complainants. *E. A. De Meules*, *S. H. Kauffman*, *A. Miller*, *J. M. Souby*, *M. L. Clardy*, *H. G. Herbel*, *F. G. Wright*, *R. Dunlap*, *T. J. Norton*, and *T. Bond* for defendants. Dismissed on request of complainants September 9, 1918.

8507. *SWIFT & Co. v. St. L. & S. F. R. R. Co. et al.* Rates on packing-house products from South Omaha, Nebr., South St. Joseph, Mo., and Kansas City, Kans., to Memphis, Tenn. *R. D. Rynder* for complainant. *H. G. Herbel*, *F. G. Wright*, *Winston*, *Payne*, *Strawn & Shaw*, *N. S. Brown*, *R. B. Scott*, *T. Bond*, and *R. W. Moore* for defendants. Dismissed on request of complainant September 26, 1918.

9023, Sub. 11. *HORST Co., ASSIGNEE OF CRYSTAL SPRING BREWING & ICE Co., v. S. P. Co. et al.* Rate on hops from California points to eastern defined territories. Complaint withdrawn on request of complainant. Dismissed September 30, 1918.

9151. *CAYCE COAL Co. et al. v. L. & N. R. R. Co.* Rates on coal from western Kentucky mines to Nashville, Tenn. *T. M. Henderson* for complainants. *W. A. Colston* and *W. A. Northcutt* for defendant. Transferred to Special Docket for adjustment October 21, 1918.

9217. *NATIONAL LIVE STOCK EXCHANGE v. A. A. R. R. Co. et al.* Rates, rules, and regulations governing transportation of live stock, consisting of cattle, calves, swine, sheep, lambs, and goats between points in the United States, the District of Columbia, and adjacent foreign countries. *C. B. Heinemann* for complainant. *W. G. MacEdward*, *W. L. Louis*, *W. A. Cole*, *S. S. Perry*, *Glennon*, *Cary*, *Walker & Howe*, *A. C. Tummy*, *E. W. Beatty*, *C. G. Austin, jr.*, *J. C. Bills*, *Winston*, *Payne*, *Strawn & Shaw*, *E. Barton*, *M. R. Waite*, *A. P. Humburg*, *G. S. Hobbs*, *E. D. Hotchkiss*, *A. H. Lossow*, *G. H. Dunlap*, *T. H. Burgess*, *M. B. Pierce*, *L. E. Hinkle*, *W. L. Kinter*, *H. D. Palmer*, *E. W. Knight*, *G. A. Wingfield*, *O. W. Dynes*, *H. A. Fidler*, *D. Swift*, *W. H. Bremmer*, *F. M. Miner*, *C. L. Andrus*, *E. S. Ballard*, *R. Dunlap*, *T. J. Norton*, *R. H. Widdecombe*, *H. G. Herbel*, *F. G. Wright*, *W. A. Colston*, *W. A. Northcutt*, *W. A. Parker*, *C. B. Cardy*, *R. W. Moore*, *W. F. Dickinson*, and *C. E. Dewey* for defendants. Dismissed on request of complainant October 31, 1918.

9469. *AMERICAN MINING Co. et al. v. C. & E. I. R. R. Co. et al.* Rates on coal from Illinois and Indiana mines to interstate destinations in Illinois and Indiana. *M. F. Gallagher*, *J. A. Cooper, jr.*, and *E. B. Wilkinson* for complainants. *R. W. Ropiequet*

for intervener. *E. S. Ballard, C. B. Cardy, W. F. Peter, A. P. Humburg, G. H. Kummer, T. R. Farrell, C. B. Sudborough, B. J. Rowe, E. A. Smith, R. H. May, W. Nichols, J. T. Averitt, K. S. Burgess, and O. P. Gothlin* for defendants. Dismissed on request of complainants October 31, 1918.

9511. SOUTHERN COAL, COKE & MINING CO. v. S. RY. CO. et al. Combination rates on coal from Belleville district, Ill., to Iowa, Wisconsin, Minnesota, and South Dakota. *R. W. Ropiequet* for complainant. *A. P. Humburg, R. J. Rowe, R. A. Campbell, E. A. Smith, and F. H. Law* for defendants. Dismissed on request of complainant December 3, 1918.

9795. NATIONAL PETROLEUM PRODUCTS CO. et al. v. A., T. & S. F. RY. CO. et al. Rates on petroleum and products from Cushing, Okmulgee, and other Oklahoma producing points, except Tulsa, to Joliet, Ill. *J. A. Ronan* for complainants. *J. B. Coffey, F. H. Moore, E. Mock, H. G. Herbel, and F. B. Clark* for defendants. Dismissed on request of complainants December 3, 1918.

9841. NATIONAL LIVE STOCK EXCHANGE et al. v. A. & M. R. R. CO. et al. Rates and rules governing the transportation of live stock, consisting of cattle, calves, hogs, sheep, and goats between points in the United States and the District of Columbia, and between points in other states and adjacent foreign countries. *C. B. Heinemann, S. H. Cowan, and G. Cary* for complainants. *C. B. Cardy, G. F. Hobbs, W. L. Louis, K. S. Burgess, N. E. Turner, W. A. Colston, W. A. Northcutt, A. H. Lossow, A. C. Tummy, Winston, Payne, Straun & Shaw, H. D. Howe, W. J. Mullin, R. A. Brown, R. L. Douglas, S. Moore, E. D. Hotchkiss, A. E. Haid, F. M. Miner, M. M. Joyce, S. S. Perry, W. A. Parker, W. J. Larrabee, F. H. Wood, Baker, Botts, Parker & Garwood, P. B. Warren, Denegre, Leovy & Chaffe, M. R. Waite, J. C. Bills, J. F. Dalton, E. N. Clark, J. G. McMurray, W. J. Turner, Hawkins & Franklin, Dabney & King, H. G. Herbel, F. G. Wright, Moore, Burford & Moore, C. S. Burg, J. B. Sheean, T. H. Burgess, M. B. Pierce, A. S. Halsted, W. L. Kinter, R. W. Moore, D. G. Gray, J. F. Finerty, C. B. Northrop, T. B. Wharton, W. F. Sterley, J. T. Bowe, J. M. Souby, R. H. Widdecombe, O. W. Dynes, G. A. Wingfield, A. P. Humburg, C. E. Veatch, R. Dunlap, T. J. Norton, C. Boettcher, W. R. Freeman, F. C. Baird, N. H. Loomis, H. A. Scandrett, T. J. Freeman, G. Thompson, Dickson, Ellis & Lucas, C. Donnelly, B. W. Scandrett, J. Stillwell, A. C. Spencer, B. Hallock, Boyle, Storey, Ezell & Grover, G. H. Smith, J. O. Moran, C. W. Durbrow, G. D. Squires, F. B. Austin, H. A. Fidler, C. E. Dewey, A. P. Matthew, D. Upthegrove, E. B. Perkins, J. R. Turney, W. F. Dickinson, and N. S. Brown* for defendants. Dismissed on request of complainants October 31, 1918.

9892. HOLLINGSHEAD CO. v. C. & E. I. R. R. CO. Demurrage charges at Thebes, Ill., on 1 carload of oak staves shipped from Ashdown, Ark., and 1 carload of elm staves shipped from Rives, Mo. *H. M. Welker* for complainant. *C. B. Anderson and F. E. Webster* for defendant. Complaint satisfied. Dismissed December 3, 1918.

9920. NATIONAL LIVE STOCK EXCHANGE v. A. & N. M. RY. CO. et al. Rates on calves in carloads between various interstate points, and particularly between points in western classification territory. *C. B. Heinemann* for complainant. *K. F. Burgess, Thompson, Barwise & Wharton, W. F. Sterley, J. T. Bowe, J. B. Sheean, D. Upthegrove, E. B. Perkins, J. R. Turney, C. S. Burg, R. W. Moore, A. H. Lossow, E. E. Whitted, A. S. Brooks, F. M. Miner, M. M. Joyce, A. P. Humburg, Wilson, Dabney & King, A. E. Haid, R. A. Brown, R. L. Douglas, F. H. Wood, Baker, Botts, Parker & Garwood, R. H. Widdecombe, E. N. Clark, Denegre, Leovy & Chaffe, R. Dunlap, T. J. Norton, O. W. Dynes, P. B. Warren, S. Moore, L. J. Hackney, C. E. Veatch, J. F. Finerty, N. H. Loomis, H. A. Scandrett, H. G. Herbel, F. G. Wright, T. J. Freeman, G. Thompson, R. K. Minson, C. Donnelly, B. W. Scandrett, A. Miller, G. H. Smith, J. O. Moran, A. C. Spencer, B. Hallock, Dickson, Ellis & Lucas, C. W. Durbrow, G. D. Squire, F. B. Austin, N. S. Brown, Moore, Burford & Moore, A. P. Matthew, Boyle, Ezell, Houston & Grover, and W. F. Dickinson* for defendants. Dismissed on request of complainant October 31, 1918.

9963. ALGONA CO-OPERATIVE CREAMERY Co. et al. v. B. & O. R. R. Co. et al. Refrigeration charges on dressed poultry, butter, eggs, and cheese, in any quantity, in official classification territory. No appearance for complainants. *D. P. Connell* for defendants. Dismissed on request of complainants December 3, 1918.

10096. LUMBER TRANSIT AT CAIRO AND MISSISSIPPI POINTS. Fifteenth section applications proposing increased charges for transit service on lumber. *G. Butler, J. A. Ronan, A. H. Noyes, L. E. Dye, R. Williams, U. S. Musick, and E. Barnett* for protestants. *R. V. Fletcher, J. D. Youman, H. R. Wilson, and L. W. Watson* for petitioning carriers. Applications withdrawn by petitioning carriers. Proceeding discontinued Nov. 6, 1918.

10099. LUMBER TO CHICAGO AND RELATED POINTS. Fifteenth section application proposing increased rates on lumber and articles taking same rates. *A. E. Solie, F. M. Ducker, W. D. Clumpner, A. G. Kingsley, D. D. Conn, and A. A. Adams* for protestants. *R. H. Widdecombe, A. F. Cleveland, K. F. Burgess, G. C. Wright, E. G. Clark, J. G. Morrison, R. G. Brown, W. F. Dickinson, E. B. Finegan, L. R. Capron, and B. F. Moffatt* for petitioning carriers. Applications withdrawn by petitioning carriers. Proceeding discontinued September 9, 1918.

10100. WESTERN TRUNK LINE HAY AND STRAW. Fifteenth section application proposing increased charges on hay and straw. Application withdrawn by petitioning carriers. Proceeding discontinued September 9, 1918.

10106. GRESS MFG. Co. v. A. C. L. R. R. Co. Demurrage charges on cars placed for loading with piling at Norton's Spur, Fla., for shipment to South Norfolk, Va. No appearances. Dismissed on request of complainant September 9, 1918.

10116. DETROIT SWITCHING CHARGES. Fifteenth section application proposing increased switching charges on less-than-carload shipments at Detroit, Mich. *H. H. Smith, H. F. Masman, and J. McNally* for protestants. *F. E. Robson and D. P. Connell* for petitioning carriers. Application withdrawn by petitioning carriers. Proceeding discontinued September 30, 1918.

10117. COLORADO NUT COAL RATES. Advances in rates on pea, slack, and nut coal from Colorado mines in the Walsenburg and Trinidad districts to Bridgeport and Northport, Nebr., and intermediate points, and various other points. Application withdrawn by petitioning carriers. Proceeding discontinued September 30, 1918.

10121. LUMBER TO OMAHA AND RELATED POINTS. Fifteenth section applications proposing increased rates on lumber. Applications withdrawn by the petitioning carriers. Proceeding discontinued September 30, 1918.

10127. COMMERCIAL CLUB OF GRAND ISLAND, NEBR., et al. v. C., B. & Q. R. R. Co. et al. Class and commodity rates between Grand Island and Hastings, Nebr., and Minnesota, Wisconsin, Illinois, Iowa, Missouri, Texas, Mississippi, Alabama, Oklahoma, Louisiana, and Arkansas, and points east of the Illinois-Indiana state line. *W. H. Young* for complainants. *W. H. Young and C. E. Childe* for interveners. *C. B. Hopper, Moore, Burford & Moore, C. G. Austin, jr., W. L. Louis, A. H. Lossow, H. A. Fidler, E. S. White, T. A. Hynes, T. E. H. Snow, W. J. Turner, W. A. Northcutt, N. W. Proctor, A. C. Tumy, A. P. Humburg, P. B. Warren, M. R. Waite, T. H. Burgess, M. B. Pierce, F. M. Miner, M. M. Joyce, O. W. Dynes, A. P. Gilbert, W. L. Kinter, J. Stillwell, R. H. Widdecombe, Andrews, Streetman, Burns & Logue, R. C. Fulbright, C. S. Burg, J. B. Sheean, Glennon, Cary & Walker, J. F. Finerty, E. W. Lawrence, J. L. Seager, R. Dunlap, T. J. Norton, K. L. Richmond, R. W. Moore, Denegre, Leovy & Chaffe, F. H. Wood, T. J. Freeman, G. Thompson, H. G. Herbel, J. M. Chaney, Boyle, Ezell, Houston & Grover, D. G. Gray, R. A. Brown, R. L. Douglas, H. T. Ballard, A. E. Haid, D. Upthegrove, E. B. Perkins, J. R. Turney, D. P. Connell, N. S. Brown, W. F. Dickinson, C. E. Dewey, Baker, Botts, Parker & Garwood, K. F. Burgess, and N. H. Loomis* for defendants. Dismissed on request of complainants December 3, 1918.

10137. KAUFMAN & SONS CO. v. C. R. R. Co. of N. J. et al. Rates on roll scale and mill cinder from Elizabethport, N. J., to Earlston and Saxton, Pa. *L. Kaufman* for complainant. *H. W. Bikle, G. S. Patterson, G. Holmes, and A. H. Elder* for defendants. Dismissed on request of complainant December 3, 1918.

10172. VIRGINIA IRON, COAL & COKE CO. et al. v. S. Ry. Co. et al. Rates on iron ore from North Carolina, Virginia, Georgia, and Tennessee to Middlesboro, Ky. *F. Lyon* for complainants. *W. A. Northcutt, N. W. Proctor, and R. W. Moore* for defendants. Dismissed on request of complainants September 9, 1918.

10181. DALLAS COOPERAGE & WOODENWARE CO. v. A. & G. R. R. Co. et al. Rates on staves, heading, hoops, and other lumber products from Batesville and Sparkman, Ark., Morehouse, Mo., and other points to Oak Cliff, Tex. *J. A. Morgan* for complainant. *S. S. Senne, C. S. Burg, Moore, Burford & Moore, A. E. Haid T. J. Freeman, G. Thompson, F. H. Wood, Baker, Botts, Parker & Garwood, R. Dunlap, T. J. Norton, H. G. Herbel, J. M. Turney, W. F. Dickinson, F. Andrews, and R. W. Moore* for defendants. Complaint satisfied. Dismissed December 3, 1918.

10206. NATIONAL WHOLESALE LUMBER DEALERS ASSO., FOR CYPRESS LUMBER CO. v. A. N. R. R. Co. et al. Rates on lumber from Apalachicola, Fla., to Newport, R. I., and Neponset, Mass. *W. S. Phippen* for complainant. *H. W. Bikle, G. S. Patterson, and R. W. Moore* for defendants. Complainant satisfied. Dismissed November 6, 1918.

10229. PUBLIC SERVICE COMMISSION OF WASHINGTON et al. v. McADOO et al. Alleges unreasonableness of rates on fresh fruits, fresh vegetables, fruit juices, canned fruits, canned vegetables, and containers used in the shipment of the manufactured products thereof, increased by General Order No. 28 of the Director General, effective June 25, 1918. *H. H. Cleland, J. W. Graham, L. C. Neff, J. O. Bailey, and W. E. Lamb* for complainants. *H. W. Prickett* for intervener. *C. A. Hart and J. F. Finerty* for defendants. Dismissed on request of all parties October 31, 1918.

10252. OHIO CITIES GAS CO. v. McADOO et al. Charges on 200 new and empty steel tank cars moving on their own wheels from Milton, Pa., to Cabin Creek Junction, W. Va. *A. C. Harvey* for complainant. *R. W. Moore* for defendants. Dismissed on request of complainant December 3, 1918.

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REPARATION GRANTED UNDER SUPPLEMENTAL ORDERS OF THE COMMISSION DURING THE TIME COVERED BY THIS VOLUME.

7153. **NEBRASKA BRIDGE SUPPLY & LUMBER Co. v. N., C. & St. L. Ry.** September 9, 1918. Reparation for \$729.66, on shipments of cedar logs from points in Alabama and Tennessee to Atlanta, Ga., on account of unreasonable rates.

7543. **McLEAN LUMBER Co. v. A., B. & A. R. R. Co.** September 9, 1918. Reparation for \$642.48, on shipments of logs from points in Georgia to Chattanooga, Tenn., on account of unreasonable rates.

7866. **BRODERICK & BASCOM ROPE Co. v. L. & N. R. R. Co.** September 9, 1918. Reparation for \$19, on shipments of wire rope from St. Louis, Mo., to Savannah and Belfast, Ga., on account of unreasonable rates.

8567. **FULLER & Co. v. A., T. & S. F. Ry. Co.** September 9, 1918. Reparation for \$1,149.67, on shipments of linseed oil from Minneapolis, Minn., and Superior, Wis., to points in California, on account of unreasonable charges.

8582. **DRAYFUS BROS. v. L. & N. R. R. Co.** September 9, 1918. Reparation for \$18.33, on l. c. l. shipments of candy from Montgomery, Ala., to Beaumont, Tex., on account of unreasonable rate.

8740. **AMERICAN MILLING Co. v. A., T. & S. F. Ry. Co.** September 9, 1918. Reparation for \$778.77, on shipments of grain products shipped from Peoria, Ill., to destinations in C. F. A. territory, on account of unreasonable charges.

7625. (Sub-Nos. 1, 2, 4, 5, 6, and 7). **McCAULL-DINSMORE Co. v. C. & N. W. Ry. Co.** September 30, 1918. Reparation for \$1,013.11, on shipments of oats and shelled corn from points in Iowa and South Dakota to Kansas City, Mo., and other Missouri River points, on account of unreasonable rates.

8404. **LINDSAY COMMISSION Co. v. N. P. Ry. Co.** September 30, 1918. Reparation for \$33.33, on shipments of dried beans from Kendrick, Idaho, to Missoula, Mont., on account of unreasonable rate.

8640. **EDWARDS & LOOMIS Co. v. P., C., C. & St. L. Ry. Co.** September 30, 1918. Reparation for \$422.70, on shipments of poultry feed from Chicago, Ill., to Indianapolis, Ind., and certain Ohio River crossings, on account of unreasonable rates.

8751. **BARBER AGENCY Co. v. K. & E. Ry. Co.** September 30, 1918. Reparation for \$4,395.03, on shipments of turpentine and rosin from Wilmer and Hackley, La., to Minneapolis and St. Paul, Minn., on account of unreasonable rates.

8793. **WEST COAST LUMBERMEN'S ASSO. v. A. & W. Ry. Co.** December 3, 1918. Reparation for \$942.26, on shipments of cedar shingles from points in Washington and Oregon to points in Illinois, Indiana, Michigan, Missouri, Wisconsin, and Iowa, on account of unreasonable rates.

8906. **STANDARD ROOFING Co. v. M., K. & T. Ry. Co.** September 30, 1918. Reparation for \$126.68, on shipments of prepared roofing and building paper from Chicago and Chicago Heights, Ill., to Tulsa and Muskogee, Okla., on account of unreasonable rates.

8981. **EARL FRUIT Co. v. O. S. L. R. R. Co.** September 30, 1918. Reparation for \$166.40, on shipments of prunes from Emmett, Idaho, to Chicago, Ill., reconsigned to Liberal, Kans., subsequently reconsigned to Greensburg, Kans., and later to Pratt, Kans., on account of unreasonable rate.

9047. **CAMPBELL & CLEAVER v. St. L. & S. F. Ry. Co.** September 30, 1918. Reparation for \$188.97, on shipments of cotton from Davidson and Schneider, Okla., concentrated at Lawton, Okla., and reshipped to Texas City, Tex., and New Orleans, La., for export, on account of unreasonable charges.

9257. **WARREN FISH Co. v. L. & N. R. R. Co.** September 30, 1918. Reparation for \$3,876.30, on shipments of fish from Pensacola, Fla., to various destinations, on account of unreasonable charges.

9339 and 9391. **ALCUS & Co. v. L. R. & N. Co.; Same v. Same.** September 30, 1918. Reparation for \$872.16, on shipments of rough lumber from McElroy, La., to New Orleans, La., there milled and reshipped as box material, to various destinations, on account of unreasonable rates.

4488. **TAMPA FUEL Co. v. A. C. L. R. R. Co.** November 6, 1918. Reparation for \$1,748.74, on shipments of coal from North Atlantic points to Tampa, Fla., on account of unreasonable handling and wharfage charges.

4800. **SLOSS-SHEFFIELD STEEL & IRON Co. v. L. & N. R. R. Co.** November 6, 1918. Reparation for \$437.50, on shipments of pig iron from points in Alabama to points in Michigan, Illinois, and Indiana, on account of unreasonable rates.

7321. **CUMMINGS v. B. & M. R. R.** November 6, 1918. Reparation for \$51.27, on shipments of apples from West Paris, Me., to Boston, Mass., for export, on account of unreasonable rate.

8516. **SWIFT CANADIAN Co. v. G. T. R. Co. OF CANADA.** November 6, 1918. Reparation for \$222.16, on shipments of fresh meat from West Toronto, Canada, to New York, N. Y., and Jersey City, N. J., on account of unreasonable charges.

8707. **SOUTH MISSISSIPPI DAIRYMEN'S ASSO. v. I. C. R. R. Co.** November 6, 1918. Reparation for \$3,186.91, on shipments of milk from Brookhaven, Wesson, Hazelhurst, and Crystal Springs, Miss., to New Orleans, La., on account of unreasonable rates.

8813. **SULZBERGER & SONS Co. v. C., B. & Q. R. R. Co.** November 6, 1918. Reparation for \$243.95, on shipments of eggs from Oskaloosa and Chariton, Iowa, to Chicago, Ill., on account of unreasonable rates.

8842. **CONSUMERS Co. v. M., St. P. & S. S. M. Ry. Co.** November 6, 1918. Reparation for \$791.99, on shipments of ice from Camp Lake and Silver Lake, Wis., to Chicago, Ill., on account of unreasonable charges.

8912. **ALABAMA PACKING Co. v. L. & N. R. R. Co.** November 6, 1918. Reparation for \$2,783.28, on shipments of live stock from various points to Birmingham, Ala., on account of unreasonable rates.

8918. **SWIFT & Co. v. N. Y. C. R. R. Co.** November 6, 1918. Reparation for \$947.09, on account of unreasonable rates on various carloads of fresh meat, imported from South America, and on fresh meat for export, transported between ship side and stations in New York, N. Y.

8985. **STEAGALL & LIGHTFOOT v. L. & N. R. R. Co.** November 6, 1918. Reparation for \$3,461.11, on shipments of live stock from various points to Montgomery, Ala., on account of unreasonable rates.

9181. **CONTINENTAL CAN Co. v. A. C. R. R. Co.** November 6, 1918. Reparation for \$1,933.12, on shipments of empty tin cans from Baltimore, Md., to various destinations, on account of unreasonable rates.

9210 (Sub-No. 3) and 9210 (Sub-No. 4). **PAPE v. P. R. R. Co; RIVENBURG & Co. v. Same.** November 6, 1918. Reparation for \$1,183.55, on shipments of fruits and vegetables destined to New York, N. Y., and held at Jersey City, N. J., because of defendant's inability to make proper delivery, on account of damages due to drayage charges.

9328. **LAKE CHARLES RICE MILLING Co. v. S. P. Co.** November 6, 1918. Reparation for \$1,612.43, on shipments of rough rice from California points to Lake Charles, La., on account of unreasonable charges.

9554. *TERRE HAUTE PAPER Co. v. St. L.-S. F. Ry. Co.* November 6, 1918. Reparation for \$1,414.71, on shipments of baled straw from Sikeston, Oran, McMullin, and Matthews, Mo., to Terre Haute, Ind., on account of unreasonable and illegal rates.

9653. *CAROLINA WOOD PRODUCTS Co. v. S. Ry. Co.* November 6, 1918. Reparation for \$1,602.95, on shipments of chestnut extract wood from stations on Louisville & Nashville Railroad in Georgia to Andrews, N. C., on account of unreasonable charges.

8788. *AMERICAN GLUE Co. v. B. & N. R. R.* December 3, 1918. Reparation for \$89.44, on shipments of fleshings from Stoneham, Mass., to Keene, N. H., on account of unreasonable rates.

9000. *LAMBERT Co. v. St. L., I. M. & S. Ry. Co.* December 3, 1918. Reparation for \$1,156.81, on shipments of bituminous coal from Mercer, Ky., to Elaine, Ark., on account of unreasonable rates.

9128. *DU PONT DE NEMOURS POWDER Co. v. P. R. R. Co.* December 3, 1918. Reparation for \$6,861.47, on shipments of coal ashes and cinder from Coatesville, Pa., to Carneys Point, N. J., on account of unreasonable rates.

9311. *GREAT FALLS GAS Co. v. C., B. & Q. R. R. Co.* December 3, 1918. Reparation for \$181.94, on shipments of gas oil from Cowley, Wyo., to Great Falls, Mont., on account of unreasonable rate.

9422. *NEW JERSEY ZINC Co. v. B. & O. R. R. Co.* September 30, 1918. Reparation for \$1,586.70, on shipments of crude barytes from Cartersville, Ga., to Hazard, Pa., on account of unreasonable rate.

9501. *CROWN-WILLAMETTE PAPER Co. v. P. R. R. Co.* December 3, 1918. Reparation for \$1,108.98, on shipments of paper pulp from Washington, D. C., to Portland, Oreg., on account of unreasonable charges.

9529 and 9529 (Sub. No. 1). *EWAUNA BOX Co. v. S. P. Co.; CALIFORNIA FRUIT EXCH. v. SAME.* November 6, 1918. Reparation for \$2,646.80, on shipments of box shooks from Klamath Falls, Oreg., to various points in California, on account of unreasonable rates.

9567 (Sub. No. 1). *DU PONT DE NEMOURS POWDER Co. v. P. & R. Ry. Co.* December 3, 1918. Reparation for \$486.70, on shipments of coal ashes and cinder from Coatesville, Pa., to Gibbstown, N. J., on account of unreasonable rates.

NOTE.—The amount of reparation awarded in the above cases aggregates \$51,114.45.

51 I. C. C.

ORDERS ISSUED INVOLVING REPARATION IN INFORMAL PLEADINGS FOR THE YEAR ENDED OCTOBER 31, 1918.

For the year ended October 31, 1918, the number of orders issued involving reparation in informal pleadings was 2,752, the number of claims denied or otherwise closed during that period was 182, and the amount of reparation awarded was \$682,900.50.

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- Berlin, Iowa, to Pittsburgh, Scranton, and Wilkes-Barre, Pa. Potatoes, 15.
- Beverly, Mass., to Salem, Mass., destined to interstate points. Ferry-car charges on shoe machinery and parts, 28.
- Biddeford, Me., to Oskaloosa, Iowa. Cotton piece goods, 713 (716).
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- Birmingham, Ala., to Mayfield, Ky. Cotton factory products, 326.
- Birmingham, Ala., to Ohio River crossings, and points north and east thereof, and to New England. Pig iron, 635.
- Birmingham, Ala., from Kentucky. Onions and potatoes, 155.
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- Blissville, Ark., to Missouri, Kansas, Nebraska, Iowa, and Colorado. Hardwood lumber, 734.

- Bonfield, Ill., from Elk River, Idaho. Pine lumber, 31.
- Bonnors Ferry, Idaho, to Montana and North Dakota. Pine and fir lumber, 221.
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- Chattanooga, Tenn., to Mayfield, Ky. Cotton-factory products, 326.
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- Chattanooga, Tenn., to Ohio River crossings, and points north and east thereof, and to New England. Pig iron, 635.
- Checotah, Okla., to Waco, Tex. Glass bottles, flasks, and demijohns, 668.
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- Chicago, Ill., from Charleston, Miss. Gum and oak lumber, 6.
- Chicago, Ill., from Humboldt Bay district, Calif. Lumber and other forest products, 738 (745).
- Chicago, Ill., from Iowa. Eggs, 177.
- Chicago, Ill., to Muncie and New Castle, Ind., and Middletown, Ohio. Meat, 153.
- Chicago, Ill., from Muskogee, Okla. Eggs and live poultry, 108.
- Chicago, Ill., from Paducah, Ky. Cotton mop heads, 462.
- Chicago, Ill., to Red Oak, Iowa. Book, cover, and printing paper, 713 (717).
- Chicago, Ill., from Rice, Minn. Potatoes, 364.
- Chicago, Ill., from Richmond, Calif. Liquid petrolatum, 598.
- Chicago, Ill., from San Francisco, Calif. Mustard-seed oil, 225.
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- Clarks, Nebr., from Boone, Iowa. Building brick, 630.
- Clarkson, Nebr., from Hutchinson, Kans. Salt, 21.
- Cleveland, Ohio, from Carpenter and Otranto, Iowa. Potatoes, 493.
- Clinton, Iowa, from Humboldt Bay district, Calif. Lumber and other forest products, 738 (761).
- Cloquet, Minn., to Wichita, Kans. News print paper, 505.
- Coal City, Ala., to Cairo, Ill., diverted to Carpenter, Ill., and subsequently to Toledo, Ohio. Pine lumber, 149.

- Coeur d'Alene, Idaho, to Montana and North Dakota. Pine and fir lumber, 221.
- Coffeyville, Kans., to Sapulpa, Okla. Empty slack barrels, 496.
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- Colorado common points from Humboldt Bay district, Calif. Lumber and other forest products, 738.
- Colorado common points from Idaho. Fruit, 697.
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- Columbia, S. C., to Mayfield, Ky. Cotton factory products, 326.
- Columbus, Ga., to Des Moines, Iowa. Cotton piece goods, 713 (714, 716).
- Columbus, Ohio, from Berkeley Springs, W. Va. Inside-door protection for glass sand, 475.
- Columbus, Ohio, from Rice, Minn. Potatoes, 364.
- Continental, Mo., to Slater, Mo. Cement, 579.
- Continental, Ohio, from Carpenter and Otranto, Iowa. Potatoes, 493.
- Cooper Heights, Ga., to Chattanooga, Tenn. Pine lumber, 425.
- Copperhill, Tenn., to Gibbstown and Carney's Point, N. J. Sulphuric acid, 589.
- Cordell, Okla., to Wichita, Kans. Hides, tallow, and wool, 356 (360).
- Cordova, Ala., to Fairfield, Iowa. Cotton piece goods, 713 (716).
- Corona, N. Y., from Arcola, Ga. Lumber, 531.
- Council Bluffs, Iowa, from Cedar Creek, Nebr., diverted to Shenandoah, Iowa. Crushed stone, 429.
- Coushatta, La., from Dayton, Ohio. Sewing machines, 441.
- Creston, Nebr., from Hutchinson, Kans. Salt, 21.
- Crossett, Ark., to Baltimore, Md., Philadelphia, Pa., New York, N. Y., Ottawa, Ontario, and other eastern points. Pine lumber, 438.
- Cuero, Tex., from McAlester, Okla. New jute bagging, 509.
- Currie, Tenn., to Providence, R. I. Strawberries, 167.
- Cushing, Okla., to Houston, Tex. New jute bagging, 509.
- Cynthiana, Ky., from Franklin, Pa. Petroleum refined oil, 140.
- Cynthiana, Ky., from Sulligent, Ala. Lumber, 203.
- Cypress, Fla., to Bainbridge, Ga. Cottonseed, 9.
- Dallas, Ga., to Des Moines, Iowa. Cotton piece goods, 713 (716).
- Dallas, Tex., from Richmond, Calif. Liquid petrolatum, 598.
- Danville, Va., to Eddyville, Ky. Cotton piece goods, 607.
- Dayton, Ohio. Demurrage charges on coal and lumber, 191.
- Dayton, Ohio, to Bienville, Ruston, Mansfield, and Coushatta, La. Sewing machines, 441.
- Dayton, Ohio, from Rice, Minn. Potatoes, 364.
- De Queen, Ark., to Tulsa, Okla. Sweet potatoes, 683.
- Deadwood, S. Dak., from Central City, S. Dak., originating at Alger, Wyo. Soft coal, 482.
- Defined territories from Idaho. Fruit, 697.
- Dempster, S. Dak., from Miles City, Mont. Stock sheep, 601.
- Denver, Colo., from Humboldt Bay district, Calif. Lumber and other forest products, 738 (745).
- Denver, Colo., from Richmond, Calif. Liquid petrolatum, 598.
- Des Moines, Iowa, from Alabama, Georgia, North Carolina, and South Carolina. Cotton piece goods, 713 (716).
- Detroit, Mich., from Carpenter and Otranto, Iowa. Potatoes, 493.
- Detroit, Mich., from Jemison, Ala., thence forwarded to Trenton, Nova Scotia. Yellow-pine lumber, 605.
- Detroit, Mich., to Stockton, Calif. Steel lubricating or grease cups, 397.
- 51 I. C. C.

- Detroit, Mich., to and from Windsor, Ontario. Operation of ferryboats, 436.
- Dike, Iowa, to Pittsburgh, Scranton, and Wilkes-Barre, Pa. Potatoes, 15.
- Dodge, Nebr., from Hutchinson, Kans. Salt, 21.
- Dodson, Mont., from Wahkiakus, Wash. Pine lumber, 99.
- Dollville, Ill., to Massachusetts, New York, Pennsylvania, and Virginia. Baled hay, 469.
- Dothan, Ala., from Niagara Falls, Ontario. Cyanamid, 172, 236.
- Duke, N. C., to Des Moines and Oskaloosa, Iowa. Cotton piece goods, 713 (716).
- Duluth, Minn., to Muncie, Kans. Blacksmith coal, 612.
- Dunsmuir, Calif., from Algoma, Oreg., via Klamath Falls, Oreg. Locomotive and tender, 529.
- Dupont, Wash., from Montchannin, Del. Nitrate of potash, 621.
- Durham, N. C., from East Point and Atlanta, Ga. Feldspar, 124.
- Durham, N. C., to Oskaloosa, Iowa. Cotton piece goods, 713 (716).
- Eagle Cliff, Ga., to Chattanooga, Tenn. Pine lumber, 425.
- Early, Iowa, from Indiana Harbor, Ind. Steel bars, 713 (717).
- East Chicago, Ind., to Storm Lake, Iowa. Iron rods and bars, 713 (720).
- East Liverpool, Ohio, to and from Chester, W. Va. Commutation fares, 563.
- East Point, Ga., to Durham and Winston-Salem, N. C. Feldspar, 124.
- East Portland, Oreg., from Antioch, Calif. Celery, 91.
- East Radford, Va., from Gibbstown, N. J. High explosives, 553.
- East St. Louis, Ill., from Harvey, La. Blackstrap molasses, 147.
- East St. Louis, Ill., from Missouri. Live stock; caretakers, 71.
- East St. Louis, Ill., from Pentoga, Mich. Old rails, 90.
- East St. Louis, Ill., from Seattle, Wash. Sulphate of potash, 115.
- Eastern defined territories from Humboldt Bay district, Calif. Lumber and other forest products, 738.
- Eastern defined territories to Spokane, Wash. Commodity rates, 659.
- Eastern defined territories to Spokane, Wash. Steel plates and rivets, 667.
- Eastern trunk line territory from Chicago, Ill. Lumber, 431.
- Eddyville, Ky., from Danville, Va. Cotton piece goods, 607.
- El Paso, Tex., to Globe, Ariz., originating at Jacksonville, Tex. Peaches; refrigeration, 158.
- Elizabethport, N. J., from Massachusetts. Spent iron mass (spent oxide), 118.
- Elizabethport, N. J., to Sharon, Pa. Scrap iron, 521.
- Elk City, Okla., to Forgan, Okla. Standard time, 555.
- Elk Mountain, N. C., from Haldeman, Ky. Fire brick, 584.
- Elk River, Idaho, to Bonfield and other Illinois points. Pine lumber, 31.
- Elm Grove, Wis., from Lilly, Pa., reconsigned to North Milwaukee, Wis. Coal, 227.
- Elnora, Ark., to Cairo, Ill. Railroad ties, 518.
- Emporium, Pa., from Alabama, Georgia, Mississippi, and South Carolina. Sulphuric acid, 11.
- Emporium, Pa., from Henderson, Ky. Alcohol, 209.
- Emporium, Pa., from Savannah, Ga. Sulphuric acid, 674.
- Emporium, Pa., to Thomasville, Pa. High explosives, 615.
- Empress mine, Wash., to Portland and other Oregon points. Coal, 345.
- Ensley, Ala., from Shreveport, La. Sulphuric acid, 617.
- Enterprise, Ala., to Des Moines, Iowa. Cotton piece goods, 713 (716).
- Essex, Calif., to eastern defined territories, Colorado common points, and points east thereof. Lumber and other forest products, 738.
- Eugene, Mo., to Kansas City, Kans., through Kansas City, Mo., and returned to Kansas City, Mo. Cull and windfall apples, 390.
- Eureka, Calif., to eastern defined territories, Colorado common points, and points east thereof. Lumber and other forest products, 738.

- Fairfield, Iowa, from Cordova, Ala., Nashua, N. H., and Graham and Raleigh, N. C. Cotton piece goods, 713 (716).
- Fairgrounds, Fla., to Bainbridge, Ga. Cottonseed, 9.
- Falco, Ala., to destinations on and north of the Ohio River, and in Tennessee and Kentucky. Yellow-pine lumber, 317.
- Fargo, N. Dak., from Willamette Valley, Oreg. Lumber and forest products, 250.
- Farrell, Pa. Car spotting charges, 545.
- Flintstone, Ga., to Chattanooga, Tenn. Pine lumber, 425.
- Flintstone, Ga., from North Birmingham, Ala. High explosives, 633.
- Florida to Bainbridge, Ga. Cottonseed, 9.
- Florida to New Glasgow and Trenton, Nova Scotia. Yellow-pine lumber, 627.
- Folsom, La., to Herrick, Ill., held in transit at Ramsey, Ill., then reconsigned to Toronto, Canada. Lumber, 214.
- Forgan, Okla., from Elk City, Okla. Standard time, 555.
- Fort Dodge, Iowa, from Canton, Ga., and Pell City, Ala. Cotton piece goods, 713 (716).
- Fort Dodge, Iowa, to Chicago, Ill., and to the Mississippi River, when destined to points east of Indiana-Illinois state line. Eggs, 177.
- Fort Dodge, Iowa, to Prospect Hill, Mo. Gypsum rock, 135.
- Fort Worth, Tex. Cotton; switching, 129.
- Fort Worth, Tex., to Oklahoma. Cattle, 395.
- France from Illinois, Kansas, Texas, Missouri, Nebraska, Iowa, and Canada, via Boston, Mass. Dressed beef, 244.
- Franklin, La., from Middletown, Ohio. Paper bags, 467.
- Franklin, Pa., to Kentucky. Petroleum refined oil, 140.
- Freeport, Ill., to Waterloo, Iowa. Gas engines, 713 (717).
- Gadsden, Ala., from New Orleans, La., originating at Gretna, La. Volatile petroleum oils, 4.
- Galesburg, Ill., from Silver Springs, Tenn. Cedar poles, posts, and highway piling, 25.
- Galveston, Tex., from Chrome, N. J., reshipped to Silverton, Colo. Mining and other machinery, 726.
- Galveston, Tex., from Purcell, Okla. New jute bagging, 509.
- Gates, Tenn., to Providence, R. I. Strawberries, 167.
- Geauga Lake, Ohio, to Pittsburgh, Pa., district. Sand and gravel, 241.
- Georgia to Chattanooga, Tenn. Pine wood, 425.
- Georgia to Iowa. Cotton piece goods, 713 (716).
- Georgia to New Glasgow and Trenton, Nova Scotia. Yellow-pine lumber, 627.
- Georgia to Pennsylvania. Sulphuric acid, 11.
- Gibbstown, N. J., from Baltimore, Md. Sulphuric acid, 453.
- Gibbstown, N. J., from Copperhill, Tenn. Sulphuric acid, 589.
- Gibbstown, N. J., to East Radford, Va. High explosives, 553.
- Gibbstown, N. J., from Port Richmond, Pa. Nitrate of soda, 671.
- Gladbrook, Iowa, to Pittsburgh, Scranton, and Wilkes-Barre, Pa. Potatoes, 15.
- Glen Raven, N. C., to Des Moines, Iowa. Cotton piece goods, 713 (714).
- Glenarm, Ky., to Mississippi Valley and southeastern territories. Onions and potatoes, 155.
- Glenolden, Pa., from Illinois. Baled hay, 469.
- Globe, Ariz., from El Paso, Tex., originating at Jacksonville, Tex. Peaches; refrigeration, 158.
- Globe, Ariz., from San Antonio, Tex. Delaware punch sirup, 143.
- Goderich, Canada, from Mellott, New Richmond, and Middletons, Ind., stored at, and reshipped from, Toledo, Ohio. Corn, 523.
- Graham, N. C., to Fairfield, Iowa. Cotton piece goods, 713 (716).
- 51 I. C. C.

- Grand Island, Nebr., from Boone, Iowa. Building brick, 630.
- Grand Rapids, Minn., to Wichita, Kans. News print paper, 505.
- Green Bay, Wis., from Camp Tolfree, Mich. Distribution of cars for logs, 78.
- Greencastle, Pa., from Roanoke, Va., originating at Alexander City, Ala. Yellow-pine lumber, 459.
- Greenfield, Ohio, to Waterloo, Iowa. Sweat pads, 713 (717).
- Greensboro, N. C., to Des Moines, Oskaloosa, and Ottumwa, Iowa. Cotton denims and cotton piece goods, 713 (716).
- Greenville, N. H., to Oskaloosa, Iowa. Cotton piece goods, 713 (716).
- Greenwood, Miss., from San Antonio, Tex. Delaware punch sirup, 143.
- Gregory, S. Dak., from Silver Springs, Tenn. Cedar poles, posts, and highway piling, 25.
- Gretna, La., to Mobile and Gadsden, Ala., and Knoxville, Tenn. Gasoline, 4.
- Grundy Center, Iowa, to Pittsburgh, Scranton, and Wilkes-Barre, Pa. Potatoes, 15.
- Gulfport, Miss., to Pennsylvania. Sulphuric acid, 11.
- Haldeman, Ky., to Elk Mountain, N. C. Fire brick, 584.
- Hancock, W. Va., to Jeannette, New Kensington, Monongahela City, and Belle Vernon, Pa. Glass sand, 704.
- Hannibal, Mo., from Rice, Minn. Potatoes, 364.
- Harlan, Iowa, to the Mississippi River, when destined to points east of Indiana-Illinois state line. Eggs, 177.
- Harlem River, New York, N. Y. Potatoes; car-detention charges, 399.
- Harold, Ky., to Newport News, Va., destined to points outside the Virginia capes. Coal, 370.
- Harrisburg, Pa., from Helen, Ga. Lumber, 456.
- Harrodsburg, Ky., from Franklin, Pa. Petroleum refined oil, 140.
- Harvey, La., to St. Louis, Mo., and East St. Louis, Ill. Blackstrap molasses, 147.
- Hattiesburg, Miss., from Niagara Falls, Ontario. Cyanamid, 236.
- Hattiesburg, Miss., to Pennsylvania. Sulphuric acid, 11.
- Hawthorne, N. J., from Syracuse, N. Y. Red oil, 197.
- Haynies, Iowa, from Louisville, Nebr. Crushed stone, 185.
- Helen, Ga., to trunk line and New England territories, and Virginia cities. Lumber, 456.
- Helena, Ark., to Medina, N. Y. Gum lumber, 174.
- Henderson, Ky., to Mount Union and Emporium, Pa. Alcohol, 209.
- Hendley, Nebr., from Silver Springs, Tenn. Cedar poles, posts, and highway piling, 25.
- Henton, Ill., to Massachusetts, New York, Pennsylvania, and Virginia. Baled hay, 469.
- Hercules, Calif., from Milwaukee, Wis., Indianapolis, Ind., Woodward, Ala., Lackawanna and Solvay, N. Y., and Philadelphia, Pa. Toluol, 230.
- Herrick, Ill., from Louisiana, held in transit at Ramsey, Ill., then reconsigned to Toronto, Canada. Lumber, 214.
- Herrin, Ill., to Belle Plaine, Iowa. Slack coal, 713 (717).
- High Point, Ga., to Chattanooga, Tenn. Pine lumber, 425.
- Holland, Iowa, to Pittsburgh, Scranton, and Wilkes-Barre, Pa. Potatoes, 15.
- Holt, Ala., to Seattle, Wash. Cast-iron pipe, 101.
- Hooper, Nebr., from Hutchinson, Kans. Salt, 21.
- Hopewell, Va., from Birmingham, Ala. Cottonseed hull shavings, 593.
- Hopewell, Va., to Lake Junction, N. J. Wet nitrocellulose, 427.
- Hopewell, Va., from Marcus Hook, Pa. Sulphuric acid, 477.
- Houston, Tex., from Ada, Chickasha, Ardmore, and Cushing, Okla. New jute bagging, 509.

- Houston, Tex., from New Orleans and other Louisiana points. Sugar and green coffee, 653.
- Hudson, N. Y., from Bowling Green, Ohio. Old rails, 133.
- Humbert, Pa., to various destinations. Lumber and forest products, 199.
- Humboldt Bay district, Calif., to eastern defined territories, Colorado common points, and points east thereof. Lumber and other forest products, 738.
- Huntington, W. Va., from Berkeley Springs, W. Va. Inside-door protection for glass sand, 475.
- Huntington, W. Va., to St. Paul and Minneapolis, Minn. Empty glass bottles, 491.
- Hutchinson, Kans., to Nebraska. Salt, 21.
- Hutchinson, Ky., from Sioux City, Iowa. Stock cattle, 95.
- Ida Grove, Iowa, from Monessen, Pa. Nails, wire, wire fence, and staples, 713 (716).
- Idaho to defined territories, Colorado common points, and points east thereof. Fruit, 697.
- Idaho to destinations east of the Rocky Mountains. Lumber; minimum weight, 571.
- Idaho from Wyoming and Utah. Coal, 697.
- Illinois to Boston, Mass., there stored and subsequently exported to France. Dressed beef, 244.
- Illinois from Elk River, Idaho. Pine lumber, 31.
- Illinois to Massachusetts, New York, Pennsylvania, and Virginia. Baled hay, 469.
- Illinois from Rice, Minn. Potatoes, 364.
- Illinois from Springfield, Minn. Flour and flour-mill products, 216.
- Illinois coal fields to Cape Girardeau, Mo. Bituminous coal, 105.
- Independence, La., to Providence, R. I. Strawberries, 167.
- Indiana from Chicago, Ill. Meat, 153.
- Indiana from Rice, Minn. Potatoes, 364.
- Indiana from Springfield, Minn. Flour and flour-mill products, 216.
- Indiana to Toledo, Ohio, stored and subsequently reshipped to Canada. Corn, 523.
- Indiana to Townley, N. J. Hay, 596.
- Indiana Harbor, Ind., to Odebolt, Early, and Linn Grove, Iowa. Steel bars, 713 (717).
- Indiana Harbor, Ind., to Phoenix, Ariz. Plain sheet steel, 97.
- Indiana-Illinois state line, points east of, from Mississippi River, originating at Fort Dodge, Audubon, and Harlan, Iowa. Eggs, 177.
- Indianapolis, Ind., to Batesville, Ark. Oak heading, 23.
- Indianapolis, Ind., from Carpenter and Otranto, Iowa. Potatoes, 493.
- Indianapolis, Ind., to Hercules, Calif. Toluol, 230.
- Indianapolis, Ind., from Rice, Minn. Potatoes, 364.
- International Falls, Minn., to Wichita, Kans. News print paper, 505.
- Iowa from Blissville, Ark. Hardwood lumber, 734.
- Iowa to Boston, Mass., there stored and subsequently exported to France. Dressed beef, 244.
- Iowa to Chicago, Ill., and points east of Indiana-Illinois state line. Eggs, 177.
- Iowa from Colorado mines. Soft coal, 679.
- Iowa to Pittsburgh, Scranton, and Wilkes-Barre, Pa. Potatoes, 15.
- Iowa from Rice, Minn. Potatoes, 364.
- Iowa from southern and New England territories. Cotton piece goods, 713 (714).
- Iowa from Springfield, Minn. Flour and flour-mill products, 216.
- Ishpeming, Mich., from Argentine, Kans. Sulphuric acid, 513.
- Jackson, Ky., from Franklin, Pa. Petroleum refined oil, 140.
- Jackson, Miss., to Providence, R. I. Strawberries, 167.
- Jackson, Tenn., to Providence, R. I. Strawberries, 167.
- Jacksonville, Fla., to Richmond, Va. Condensed milk, 443.

- Jacksonville, Fla., from Webberville, Mich., and Washington, D. C. Condensed milk, 443.
- Jacksonville, Tex., to El Paso, Tex., reshipped to Globe, Ariz. Peaches; refrigeration, 158.
- Jeannette, Pa., from Hancock and Berkeley Springs, W. Va., and Tonoloway and Round Top, Md. Glass sand, 704.
- Jemison, Ala., to Detroit, Mich., forwarded to Trenton, Nova Scotia. Yellow-pine lumber, 605.
- Jenkintown, Pa., from Illinois. Baled hay, 469.
- Jennie, Ark., to Thebes, Ill., and points in C. F. A. territory. Hardwood lumber, 339.
- Jerome, Ariz., from San Antonio, Tex. Delaware punch sirup, 143.
- Jersey City, N. J., from Pittsburgh, Pa. Horses, 211.
- Jersey City, N. J., from West, N. C. Lumber, 121.
- Joplin, Mo., to Sapulpa, Okla. Empty slack barrels, 496.
- Junction City, Ky., from Franklin, Pa. Petroleum refined oil, 140.
- Kane, Pa., to Boston, Mass., via Baltimore, Md. Brush blocks, 515.
- Kanorado, Kans., to St. Louis, Mo., cleaned in transit at Beatrice, Nebr. Millet seed, 189.
- Kansas from Blissville, Ark. Hardwood lumber, 734.
- Kansas to Boston, Mass., there stored and subsequently exported to France. Dressed beef, 244.
- Kansas from Colorado mines. Soft coal, 679.
- Kansas from Texas. Sudan grass seed, 111.
- Kansas from Walsenburg district, Colo. Pea and slack coal, 392.
- Kansas City, Kans., from Eugene, Mo., through Kansas City, Mo., and returned to Kansas City, Mo. Cull and windfall apples, 390.
- Kansas City, Mo., from Blissville, Ark. Hardwood lumber, 734.
- Kansas City, Mo., from Eugene, Mo., transported through Kansas City, Mo., to Kansas City, Kans., and then returned to Kansas City, Mo. Cull and windfall apples, 390.
- Kansas City, Mo., from Humboldt Bay district, Calif. Lumber and other forest products, 738 (761).
- Kansas City, Mo., from Lubbock, Tex. Sudan grass seed, 111.
- Kansas City, Mo., from Richmond, Calif. Liquid petrolatum, 598.
- Kenedy, Tex., from Oklahoma City, Okla. New jute bagging, 509.
- Kenedy, Tex., from Okmulgee, Okla. Fuel oil, 151.
- Kentucky from Falco, Ala. Yellow-pine lumber, 317.
- Kentucky from Franklin, Pa. Petroleum refined oil, 140.
- Kentucky to Mississippi Valley and southeastern territories. Onions and potatoes, 155.
- Kentucky to Providence, R. I. Strawberries, 167.
- Kentucky from Sioux City, Iowa. Stock cattle, 95.
- Kiefer, Okla., to Wichita, Kans. Hides, tallow, and wool, 356 (360).
- Kingston, Pa., from Illinois. Baled hay, 469.
- Klamath Falls, Oreg., from Algoma, Oreg., destined to Dunsmuir, Calif. Locomotive and tender, 529.
- Knoxville, Tenn., from Mobile, Ala., and New Orleans, La. Gasoline, 4.
- La Crosse, Wis., to Sioux Falls, S. Dak. Carbonated, nonalcoholic, cereal beverages, 103.
- La Crosse, Wis., to Trosky, Minn. Beer, 729.
- Lackawanna, N. Y., to Hercules, Calif. Toluol, 230.
- Lake Charles, La., to Texas. Cypress and pine lumber and shingles, 557.
- Lake Junction, N. J., from Hopewell, Va. Wet nitrocellulose, 427.

- Lambert, Mont., from Bonners Ferry and Coeur d'Alene, Idaho. Fir and pine lumber, 221.
- Lancaster, Ky., from Franklin, Pa. Petroleum refined oil, 140.
- Lanett, Ala., to Des Moines, Iowa. Cotton piece goods, 713 (716).
- Lansing, Mich., to Mason City, Iowa. Automobile, 713 (714).
- Lawrence, Kans., from Lubbock and Plainview, Tex. Sudan grass seed, 111.
- Lawrenceburg, Ky., from Franklin, Pa. Petroleum refined oil, 140.
- Lebanon, Pa., from Rahway, N. J. Scrap iron, 183.
- Leigh, Nebr., from Hutchinson, Kans. Salt, 21.
- Lenoir City, Tenn., to Ottumwa, Iowa. Cotton hosiery, 713 (716).
- Leona, Oreg., to Montana, Wyoming, North Dakota, South Dakota, Nebraska, Minnesota, Wisconsin, and Michigan, and Manitoba and Saskatchewan, Canada. Lumber and forest products, 250.
- Lexington, Ky., from Sioux City, Iowa. Stock cattle, 95.
- Lexington, S. C., to Des Moines, Iowa. Cotton piece goods, 713 (716).
- Liberal, Mo., to Burlington, Kans. Coal, 313.
- Lilly, Pa., to Elm Grove, Wis., reconsigned to North Milwaukee, Wis. Coal, 227.
- Lindale, Ga., to Des Moines, Iowa. Cotton piece goods, 713 (716).
- Lindsay, Nebr., from Hutchinson, Kans. Salt, 21.
- Linn Grove, Iowa, from Indiana Harbor, Ind. Steel bars, 713 (717).
- Little Falls, Minn., to Wichita, Kans. News print paper, 505.
- Little River Junction, Calif., to eastern defined territories, Colorado common points, and points east thereof. Lumber and other forest products, 738.
- Lockhart, Tex., from Waurika, Okla. New jute bagging, 509.
- Lodi, N. J., from Syracuse, N. Y. Red oil, 197.
- London, England, from San Francisco, Calif., exported through Newport News, Va., and New York, N. Y. Canned salmon, 401.
- London, Ky., from Franklin, Pa. Petroleum refined oil, 140.
- Lone Tree, Iowa, from Milwaukee, Wis. Automobiles, 713 (717).
- Loogootee, Ill., to Massachusetts, New York, Pennsylvania, and Virginia. Baled hay, 469.
- Los Alamitos, Calif., from Birmingham, Ala., originating at Benham, Ky. Coke, 126.
- Los Angeles, Calif., from Sheboygan, Wis. Chairs, 218.
- Louisiana from Dayton, Ohio. Sewing machines, 441.
- Louisiana to Herrick, Ill., held in transit at Ramsey, Ill., then reconsigned to Toronto, Canada. Lumber, 214.
- Louisiana to Houston, Tex. Sugar and green coffee, 653.
- Louisiana to Metropolis, Ill. Logs, lumber, and products, 376.
- Louisiana to Providence, R. I. Strawberries, 167.
- Louisville, Ky., to Alexandria, Va. Distillers' dried grain, 160.
- Louisville, Nebr., to Haynies, Iowa. Crushed stone, 185.
- Louisville, Nebr., to Northboro and Macedonia, Iowa. Crushed stone, 429.
- Loup City, Nebr., from Boone, Iowa. Building brick, 630.
- Lowell, Mass., to Elizabethport, N. J. Spent iron mass (spent oxide), 118.
- Lowell, Mass., to Oskaloosa, Iowa. Cotton piece goods, 713 (716).
- Lubbock, Tex., to Lawrence and Atchison, Kans., and Kansas City, Mo. Sudan grass seed, 111.
- Ludington, Mich. Failure to hold car of coal, 227.
- Lynchburg, Va., from Helen, Ga. Lumber, 456.
- Lynchburg, Va., from Illinois. Baled hay, 469.
- Lyndon, Ky., to Mississippi Valley and southeastern territories. Onions and potatoes, 155.
- Lynn, Mass., to Elizabethport, N. J. Spent iron mass (spent oxide), 118.

- McAlester, Okla., to Cuero, Tex. New jute bagging, 509.
- McComb, Miss., to Walnut Ridge, Ark. Contractor's outfit, 138.
- Macedonia, Iowa, from Louisville, Nebr. Crushed stone, 429.
- Maine to Oskaloosa, Iowa. Cotton-piece goods, 713 (716).
- Malden, Mass., to Elizabethport, N. J. Spent iron mass (spent oxide), 118.
- Malicoat, Ga., to Chattanooga, Tenn. Pine lumber, 425.
- Mangham, La., to Ramsay, La., via Natchez, Miss. Steel relay rails, 677.
- Manitoba, Canada, from Willamette Valley, Oreg. Lumber and other forest products, 250.
- Mansfield, La., from Dayton, Ohio. Sewing machines, 441.
- Mapleton, Iowa, from Silver Springs, Tenn. Cedar poles, posts, and highway piling, 25.
- Marcus Hook, Pa., to Hopewell, Va. Sulphuric acid, 477.
- Marianna, Fla., to Bainbridge, Ga. Cottonseed, 9.
- Marietta, Ohio, to San Francisco, Calif. Steel safes, 561.
- Martin's Ferry, Ohio, to San Francisco, Calif. Iron or steel forms or molds, 423.
- Marysvale, Utah, to New Orleans, La., for export. Sulphate of potash, 233.
- Mason City, Iowa, from Lansing, Mich. Automobile, 713 (714).
- Massachusetts from Illinois. Baled Hay, 469.
- Massachusetts to Oskaloosa, Iowa. Cotton piece goods, 713 (716).
- Mayfield, Ky., from Carolina, southeastern, and interior Mississippi Valley territories. Cotton factory products, 326.
- Medicine Lake, Mont., from Bonners Ferry and Coeur d'Alene, Idaho. Fir and pine lumber, 221.
- Medina, N. Y., from Helena, Ark. Gum lumber, 174.
- Mellott, Ind., to Toledo, Ohio, stored and subsequently reshipped to Ripley, Atwood, and Goderich, Canada. Corn, 523.
- Memphis, Tenn., from Philadelphia, Pa. Street railway transfers, 731.
- Meridian, Miss., from Kentucky. Onions and potatoes, 155.
- Meridian, Miss., from Niagara Falls, Ontario. Cyanamid, 236.
- Meridian, Miss., to Pennsylvania. Sulphuric acid, 11.
- Metropolis, Ill., from Louisiana, Arkansas, Oklahoma, and Texas. Logs, lumber, and products, 376.
- Metropolitan, Calif., to eastern defined territories, Colorado common points, and points east thereof. Lumber and other forest products, 738.
- Miami, Ariz., from Ashland, Mass. Rubber, glass, and iron roofing strips, 181.
- Michigan to Townley, N. J. Hay, 596.
- Michigan to Wichita, Kans. News print paper, 505.
- Michigan from Willamette Valley, Oreg. Lumber and other forest products, 250.
- Middletons, Ind., to Toledo, Ohio, stored and subsequently reshipped to Ripley, Atwood, and Goderich, Canada. Corn, 523.
- Middletown, Ohio, from Chicago, Ill. Meat, 153.
- Middletown, Ohio, to Franklin, La. Paper bags, 467.
- Midland, Mich. Storage charges on benzol, oils, sulphuric acid, charcoal, and chloride of sulphur, 1.
- Midland, S. Dak., from Waucoma, Iowa. Emigrant movables, 205.
- Miles City, Mont., to Dempster, S. Dak. Stock cattle, 601.
- Milford, Mass., to Elizabethport, N. J. Spent iron mass (spent oxide), 118.
- Milwaukee, Wis., to Hercules, Calif. Toluol, 230.
- Milwaukee, Wis., to Lone Tree, Iowa. Automobile, 713 (717).
- Minneapolis, Minn., from Huntington, W. Va. Empty glass bottles, 491.
- Minneapolis, Minn., to Stockton, Calif. Steel lubricating or grease cups, 397.
- Minnesota, Minn., from Boy River, Minn. Posts, 487.

- Minnesota to Wichita, Kans. News print paper, 505.
 Minnesota from Willamette Valley, Oreg. Lumber and other forest products, 250.
 Mississippi to Pennsylvania. Sulphuric acid, 11.
 Mississippi to Providence, R. I. Strawberries, 167.
 Mississippi River from Fort Dodge, Audubon, and Harlan, Iowa, destined to points east of Indiana-Illinois state line. Eggs, 177.
 Mississippi River cities from Humboldt Bay district, Calif. Lumber and other forest products, 738 (745).
 Mississippi Valley territory from Kentucky. Onions and potatoes, 155.
 Mississippi Valley territory to Mayfield, Ky. Cotton factory products, 326.
 Missouri from Blissville, Ark. Hardwood lumber, 734.
 Missouri to Boston, Mass., there stored and subsequently exported to France... Dressed beef, 244.
 Missouri from Colorado mines. Soft coal, 679.
 Missouri to East St. Louis and National Stock Yards, Ill. Live stock; caretakers, 71.
 Missouri from Rice, Minn. Potatoes, 364.
 Missouri from Springfield, Minn. Flour and flour mill products, 216.
 Missouri from Texas. Sudan grass seed, 111.
 Missouri River cities from Humboldt Bay district, Calif. Lumber and other forest products, 738 (745).
 Mobile, Ala., to Chattanooga and Knoxville, Tenn. Gasoline, 4.
 Mobile, Ala., from New Orleans, La., originating at Gretna, La. Volatile petroleum oils, 4.
 Monessen, Pa., to Ida Grove, Iowa. Nails, wire, wire fence, and staples, 713 (716).
 Monongahela City, Pa., from Hancock and Berkeley Springs, W. Va., and Tonoloway and Round Top, Md. Glass sand, 704.
 Montana from Bonners Ferry and Coeur d'Alene, Idaho. Pine and fir lumber, 221.
 Montana to destinations east of the Rocky Mountains. Lumber; minimum weight, 571.
 Montana to South Dakota. Sheep; through routes and joint rates, 601.
 Montana from Willamette Valley, Oreg. Lumber and forest products, 250.
 Montchannin, Del., to Dupont, Wash. Nitrate of potash, 621.
 Montgomery, Ala., from Kentucky. Onions and potatoes, 155.
 Montgomery, Ala., from Niagara Falls, Ontario. Cyanamid, 236.
 Montgomery, Ala., to Pennsylvania. Sulphuric acid, 11.
 Moreland, Ky., from Franklin, Pa. Petroleum refined oil, 140.
 Morenci, Ariz., from San Antonio, Tex. Delaware punch sirup, 143.
 Mount Union, Pa., from Alabama, Georgia, Mississippi, and South Carolina. Sulphuric acid, 11.
 Mount Union, Pa., from Henderson, Ky. Alcohol, 209.
 Mullen, Nebr., from Hutchinson, Kans. Salt, 21.
 Muncie, Ind. Switching charges, 418.
 Muncie, Ind., from Chicago, Ill. Meat, 153.
 Muncie, Kans., from Duluth, Minn. Blacksmith coal, 612.
 Muskogee, Okla., to Chicago, Ill., St. Louis, Mo., and points in New York. Eggs and live poultry, 108.
 Muskogee, Okla., to Yoakum, Tex. New jute bagging, 509.
 Nashua, N. H., to Fairfield, Iowa. Cotton piece goods, 713 (716).
 Nashville, Tenn., to Washington, Iowa. Mussel shells, 713 (717).
 Natchez, Miss., from Mangham, La., destined to Ramsay, La. Steel relay rails, 677.
 Natick, Mass., to Elizabethport, N. J. Spent iron mass (spent oxide), 118.
 National Stock Yards, Ill., from Missouri. Live stock; caretakers, 71.
 Natural Bridge, N. Y., to Vandergrift, Pa. Dolomite, 187.

- Navasota, Tex., from Weleetka, Okla. New jute bagging, 509.
- Nebraska from Blissville, Ark. Hardwood lumber, 734.
- Nebraska to Boston, Mass., there stored and subsequently exported to France. Dressed beef, 244.
- Nebraska from Colorado mines. Soft coal, 679.
- Nebraska from Hutchinson, Kans. Salt, 21.
- Nebraska from Willamette Valley, Oreg. Lumber and forest products, 250.
- Netcong, N. J., from Belvidere, N. J., originating at West Sheffield, Pa. Lumber and lath, 465.
- New Castle, Ind., from Chicago, Ill. Meat, 153.
- New England from Alabama and Tennessee. Pig iron, 635.
- New England territory from Helen, Ga. Lumber, 456.
- New England territory to Iowa. Cotton piece goods, 713 (714).
- New Glasgow, Nova Scotia, from Georgia, Florida, and Alabama. Yellow-pine lumber, 627.
- New Hampshire to Oskaloosa and Fairfield, Iowa. Cotton piece goods, 713 (716).
- New Jersey to Townley, N. J. Hay, 596.
- New Jersey from West, N. C. Lumber, 121.
- New Kensington, Pa., from Hancock and Berkeley Springs, W. Va., and Tonoloway and Round Top, Md. Glass sand, 704.
- New London, Iowa, from Boston and Lowell, Mass., and Nashua, N. H. Cotton piece goods, 713 (721).
- New Orleans, La., to Houston, Tex. Sugar and green coffee, 653.
- New Orleans, La., from Kentucky. Onions and potatoes, 155.
- New Orleans, La., from Marysvale, Utah. Sulphate of potash, 233.
- New Orleans, La., to Mobile and Gadsden, Ala., and Knoxville, Tenn., originating at Gretna, La. Volatile petroleum oil, 4.
- New Orleans, La., from San Antonio, Tex. Delaware punch sirup, 143.
- New Orleans, La., to Sweetwater, Tenn. Uncompressed cotton, 311.
- New Orleans, La., to Windom, Kans. Cypress lumber and laths, 114.
- New Richmond, Ind., to Toledo, Ohio, stored and subsequently reshipped to Ripley, Atwood, and Goderich, Canada. Corn, 523.
- New York from Illinois. Baled hay, 469.
- New York from Muskogee, Okla. Eggs and live poultry, 108.
- New York to Townley, N. J. Hay, 596.
- New York, N. Y. Machinery; demurrage and track storage charges, 194.
- New York, N. Y. Storage charges on canned salmon for export, 401.
- New York, N. Y., from Arcola, Ga. Lumber, 531.
- New York, N. Y., from Crossett, Ark. Pine lumber, 438.
- New York, N. Y., from Helen, Ga. Lumber, 456.
- New York, N. Y., from Humboldt Bay district, Calif. Lumber and other forest products, 738 (745).
- New York, N. Y., from Prentiss, N. C., diverted in transit to Bayonne, N. J. Rough lumber, 471.
- New York, N. Y., from Richmond, Calif. Liquid petrolatum, 598.
- New York, N. Y., from St. James, St. Peter, Loogootee, Brubaker, Henton, and Dollville, Ill. Baled hay, 469.
- New York, N. Y., to San Francisco, Calif. Cake ornaments, 454.
- Newark, N. J. Free collection and delivery service, 386.
- Newburg, Calif., to eastern defined territories, Colorado common points, and points east thereof. Lumber and other forest products, 738.
- Newmans Grove, Nebr., from Hutchinson, Kans. Salt, 21.
- Newport News, Va. Storage charges on canned salmon for export, 401.

- Newport News, Va., from Harold and Pikeville, Ky., destined to points outside the Virginia capes. Coal, 370.
- Newton, Iowa, from Rome, Ga. Cotton duck, 713 (716).
- Niagara Falls, N. Y., from Berkeley Springs, W. Va. Inside door protection for glass sand, 475.
- Niagara Falls, Ontario, to Dothan, Ala. Cyanamid, 172.
- Niagara Falls, Ontario, to Shreveport, La., and other points in the south. Cyanamid, 236.
- Nicetown, Pa., from West, N. C. Lumber, 121.
- Norfolk, Va., from Helen, Ga. Lumber, 456.
- North Bangor, Pa., from West, N. C. Lumber, 121.
- North Birmingham, Ala., to Flintstone, Ga. High explosives, 633.
- North Carolina to Iowa. Cotton piece goods, 713 (716).
- North Dakota from Bonners Ferry and Coeur d'Alene, Idaho. Pine and fir lumber, 221.
- North Dakota from Willamette Valley, Oreg. Lumber and forest products, 250.
- North Milwaukee, Wis., from Lilly, Pa., reconsigned at Elm Grove, Wis. Coal, 227.
- North Philadelphia, Pa. Hay and straw; delivery, 324.
- North Philadelphia, Pa., from Illinois. Baled hay, 469.
- North Philadelphia, Pa., from West, N. C. Lumber, 121.
- Northboro, Iowa, from Louisville, Nebr. Crushed stone, 429.
- O'Bannon, Ky., to Mississippi Valley and southeastern territories. Onions and potatoes, 155.
- Oak Hills district, Colo., to Kansas, Nebraska, Iowa, and South Dakota. Soft coal, 679.
- Oakdale, Pa., from Alabama, Georgia, Mississippi, and South Carolina. Sulphuric acid, 11.
- Odanah, Wis., to South Bend, Ind. Baled shavings, 473.
- Odebolt, Iowa, from Indiana Harbor, Ind. Steel bars, 713 (717).
- Official classification territory. Carpet sweepers and cleaners; ratings, 479.
- Official classification territory. Dressed poultry, butter, eggs, and cheese; refrigeration, 34.
- Official classification territory. Paper makers' fibers, waste paper, rags, jute waste, flax mill sweepings, old bagging, rope mill sweepings, and junk; ratings, 163.
- Ohio from Chicago, Ill. Meat, 153.
- Ohio from Rice, Minn. Potatoes, 364.
- Ohio from Springfield, Minn. Flour and flour mill products, 216.
- Ohio to Townley, N. J. Hay, 596.
- Ohio River, points on and north of, from Falco, Ala. Yellow-pine lumber, 317.
- Ohio River crossings from Alabama and Tennessee. Pig iron, 635.
- Oklahoma from Fort Worth, Tex. Cattle, 395.
- Oklahoma to Metropolis, Ill. Logs, lumber, and products, 376.
- Oklahoma to Texas. New jute bagging, 509.
- Oklahoma from Texas. Sudan grass seed, 111.
- Oklahoma to Waco, Tex. Glass bottles, flasks, demijohns, fruit jars, fruit-jar tops, jelly glasses, and tumblers, 668.
- Oklahoma to Wichita, Kans. Wool, hides, and tallow, 356.
- Oklahoma City, Okla., to Kenedy, Tex. New jute bagging, 509.
- Oklahoma City, Okla., from Tulia, Tex. Sudan grass seed, 111.
- Oklahoma-Texas state line from Waynoka and Sayre, Okla. Standard time, 555.
- Okmulgee, Okla., to Byrd, Tex. Fuel oil, 179.
- Okmulgee, Okla., to Kenedy, Tex. Fuel oil, 151.
- Okmulgee, Okla., to Waco, Tex. Glass bottles, flasks, and demijohns, 668.

- Okmulgee, Okla., to Waco, Tex. Window glass, 18.
- Omaha, Nebr., from Blissville, Ark. Hardwood lumber, 734.
- Omaha, Nebr., from Humboldt Bay district, Calif. Lumber and other forest products, 738 (761).
- Omaha, Nebr., from South Dakota. Sheep, 601.
- Omaha, Nebr., from Torrington, Wyo. Cattle, sheep, hogs, and horses, 414.
- Oneida, Ill., from Silver Springs, Tenn. Cedar poles, posts, and highway piling, 25.
- Oregon to destinations east of the Rocky Mountains. Minimum weights on lumber, 571.
- Oregon from Empress mine, Wash. Coal, 345.
- Oregon to Montana, Wyoming, North Dakota, South Dakota, Nebraska, Minnesota, Wisconsin, and Michigan, and Manitoba and Saskatchewan, Canada. Lumber and forest products, 250.
- Oskaloosa, Iowa, from Georgia, Maine, Massachusetts New Hampshire, North Carolina, and South Carolina. Cotton-piece goods, 713 (716).
- Otranto, Iowa, to Indianapolis, Ind., Detroit, Mich., Cleveland, Van Wert, Continental, and Toledo, Ohio, and Pittsburgh, Pa. Potatoes, 493.
- Ottawa, Ontario, from Crossett, Ark. Pine lumber, 438.
- Ottumwa, Iowa, from Greensboro, N. C. Cotton denims, 713 (716).
- Ottumwa, Iowa, from Lenoir City, Tenn. Cotton hosiery, 713 (716).
- Ottumwa, Iowa, from Shelbyville, Tenn. Cotton bagging, 713 (716).
- Paducah, Ky., to Chicago, Ill. Cotton mop heads, 462.
- Paducah, Ky., to Providence, R. I. Strawberries, 167.
- Palisade, Nebr., from Silver Springs, Tenn. Cedar poles, posts, and highway piling, 25.
- Paris, Ky., from Sioux City, Iowa. Stock cattle, 95.
- Pasadena, Calif., from Carthage, Mo. Cut stone, 619.
- Pelham, Ga., to Des Moines, Iowa. Cotton-piece goods, 713 (716).
- Pell City, Ala., to Des Moines and Fort Dodge, Iowa. Cotton-piece goods, 713 (714).
- Pennsylvania from Alabama, Georgia, Mississippi, and South Carolina. Sulphuric acid, 11.
- Pennsylvania from Illinois. Baled hay, 469.
- Pennsylvania to Townley, N. J. Hay, 596.
- Pennsylvania from West, N. C. Lumber, 121.
- Pentoga, Mich., to East St. Louis, Ill. Old rails, 90.
- Peoria, Ill., to Wichita, Kans. Table tops, 596.
- Perth Amboy, N. J., from Atlanta, Ga. Scrap copper, 533.
- Perth Amboy, N. J., to Seattle, Wash. Earthenware urinals, 485.
- Perth Amboy, N. J., from Shenandoah, Pa. Anthracite coal, 137.
- Phalanx, Ohio, to Pittsburgh, Pa., district. Sand and gravel, 241.
- Philadelphia, Pa., from Crossett, Ark. Pine lumber, 438.
- Philadelphia, Pa., to Hercules, Calif. Toluol, 230.
- Philadelphia, Pa., to Memphis, Tenn. Street railway transfers, 731.
- Philadelphia, Pa., from West, N. C. Lumber, 121.
- Phoenix, Ariz., from Indiana Harbor, Ind. Plain sheet steel, 97.
- Phoenix, Ariz., from San Antonio, Tex. Delaware punch sirup, 143.
- Piedmont, S. C., to Oskaloosa, Iowa. Cotton-piece goods, 713 (716).
- Pikeville, Ky., to Newport News, Va., destined to points outside the Virginia cape. Coal, 370.
- Pineville, La., to Suffern, N. Y. Lumber, 451.
- Pitman, Kans., from Spokane, Wash. Pine box shooks, 581.
- Pittsburgh, Pa. Grain; demurrage charges, 723.
- Pittsburgh, Pa., from Carpenter and Otranto, Iowa. Potatoes, 493.

- Pittsburgh, Pa., from Iowa. Potatoes, 15.
 Pittsburgh, Pa., to Jersey City, N. J. Horses, 211.
 Pittsburgh, Pa., district from Phalanx and Geauga Lake, Ohio. Sand and gravel, 241.
 Plainview, Nebr., from Hutchinson, Kans. Salt, 21.
 Plainview, Tex., to Lawrence and Atchison, Kans. Sudan grass seed, 111.
 Plentywood, Mont., from Bonners Ferry and Coeur d'Alene, Idaho. Fir and pine lumber, 221.
 Pocahontas, Ark., to Cairo and Thebes, Ill. Railroad ties, 518.
 Pocahontas, Va., from Rushville, Ind., reconsigned to Baltimore, Md., for export. Bulk shelled corn, 248.
 Port Arthur, Tex., to St. Louis, Mo. Scrap iron, 145.
 Port Arthur, Tex., from Texas for export. Cottonseed cake and meal, 583.
 Port Richmond, Pa., to Gibbstown, N. J. Nitrate of soda, 671.
 Portland, Oreg., from Antioch, Calif. Celery, 91.
 Portland, Oreg., from Empress mine, Wash. Coal, 345.
 Portland, Oreg., from Richmond, Calif. Liquid petrolatum, 598.
 Portsmouth, Ohio, to Wichita, Kans. Table tops, 586.
 Prentiss, N. C., to New York, N. Y., diverted in transit to Bayonne, N. J. Rough lumber, 471.
 Prospect Hill, Mo., from Fort Dodge, Iowa. Gypsum rock, 135.
 Providence, R. I., from Louisiana, Mississippi, Tennessee, and Kentucky. Strawberries, 167.
 Purcell, Okla., to Galveston, Tex. New jute bagging, 509.
 Rahway, N. J., to Lebanon, Pa. Scrap iron, 183.
 Raleigh, N. C., to Fairfield, Iowa. Cotton-piece goods, 713 (716).
 Ralph, Okla., to Cheyenne, Okla. Standard time, 555.
 Ramsay, La., from Mangham, La., via Natchez, Miss. Steel relay rails, 677.
 Ramsey, Idaho, to Spokane, Wash. Switching charges on coal and wood, 449.
 Ramsey, Ill. Demurrage charges on lumber, 214.
 Red Oak, Iowa, from Chicago, Ill. Book, cover, and printing paper, 713 (717).
 Rensselaer, N. Y., from South Bend, Ind. Scrap iron, 551.
 Rice, Minn., to Illinois, Missouri, Iowa, Indiana, and Ohio. Potatoes, 364.
 Richmond, Calif., to Chicago, Ill., New York and Brooklyn, N. Y., Dallas, Tex., Kansas City, Mo., Denver, Colo., and Portland, Oreg. Liquid petrolatum, 598.
 Richmond, Ky., from Franklin, Pa. Petroleum refined oil, 140.
 Richmond, Va., from Jacksonville, Fla. Condensed milk, 443.
 Richmond, Va., to Seattle, Wash. Cigarettes, 201.
 Richmond, Va., from West, N. C. Lumber, 121.
 Ripley, Canada, from Mellott, New Richmond, and Middletons, Ind., stored at, and reshipped from Toledo, Ohio. Corn, 523.
 Ripley, Tenn., to Providence, R. I. Strawberries, 167.
 Roanoke, Ala., to Pennsylvania. Sulphuric acid, 11.
 Roanoke, Va., from Alexander City, Ala., reshipped to Greencastle, Pa. Yellow-pine lumber, 459.
 Rochester, N. Y., from Crossett, Ark. Pine lumber, 438.
 Rock Creek, Ga., to Chattanooga, Tenn. Pine lumber, 425.
 Rock Hill, S. C., to Des Moines, Iowa. Cotton-piece goods, 713 (714, 716).
 Rock Island, Ill., from Humboldt Bay district, Calif. Lumber and other forest products, 738 (761).
 Rockingham, N. C., to Des Moines, Iowa. Cotton-piece goods, 713 (716).
 Rocky Mountains, destinations east of, from Oregon, Washington, Idaho, and Montana. Minimum weights on lumber, 571.
 Rome, Ga., to Newton, Iowa. Cotton duck, 713 (716).

- Roseville, Ill., from Silver Springs, Tenn. Cedar poles, posts, and highway piling, 25.
- Round Top, Md., to Jeannette, New Kensington, Monongahela City, and Belle Vernon, Pa. Glass sand, 704.
- Rushville, Ind., to Pocahontas, Va., reconsigned to Baltimore, Md., for export. Bulk shelled corn, 248.
- Ruston, La., from Dayton, Ohio. Sewing machines, 441.
- St. James, Ill., to Massachusetts, New York, Pennsylvania, and Virginia. Baled hay, 469.
- St. Louis, Mo., from Harvey, La. Blackstrap molasses, 147.
- St. Louis, Mo., from Humboldt Bay district, Calif. Lumber and other forest products, 738 (761).
- St. Louis, Mo., from Kanorado and Selden, Kans., cleaned in transit at Beatrice, Nebr. Millet seed, 189.
- St. Louis, Mo., from Muskogee, Okla. Eggs and live poultry, 108.
- St. Louis, Mo., from Port Arthur, Tex., Scrap iron, 145.
- St. Louis, Mo., from Rice, Minn. Potatoes, 364.
- St. Louis, Mo., to Wichita, Kans. Table tops, 586.
- St. Matthews, Ky., to Mississippi Valley and southeastern territories. Onions and potatoes, 155.
- St. Paul, Minn., to Carroll, Iowa. Castings, 713 (716, 719).
- St. Paul, Minn., from Huntington, W. Va. Empty glass bottles, 491.
- St. Paul, Minn., from Willamette Valley, Oreg. Lumber and forest products, 250.
- St. Peter, Ill., to Massachusetts, New York, Pennsylvania, and Virginia. Baled hay, 469.
- Salem, Mass., from Beverly, Mass., destined to interstate points. Ferry-car charges on shoe machinery and parts, 28.
- Samoa, Calif., to eastern defined territories, Colorado common points, and points east thereof. Lumber and other forest products, 738.
- San Angelo, Tex., to Alpine, Tex. Standard time, 555.
- San Angelo, Tex., from Altus, Okla. Standard time, 555.
- San Angelo, Tex., from Wichita, Kans. Standard time, 555.
- San Antonio, Tex., to Phoenix, Globe, Morenci, and Jerome, Ariz., Greenwood, Miss., and New Orleans, La. Delaware punch sirup, 143.
- San Francisco, Calif. Switching charges, 500.
- San Francisco, Calif., from Canton and Martins Ferry, Ohio. Iron and steel forms or molds, 423.
- San Francisco, Calif., to Chicago, Ill. Mustard-seed oil, 225.
- San Francisco, Calif., to Chicago, Ill. Saws, 131.
- San Francisco, Calif., to London, England, exported through Newport News, Va., and New York, N. Y. Canned salmon, 401.
- San Francisco, Calif., from Marietta, Ohio. Steel safes, 561.
- San Francisco, Calif., from New York, N. Y. Cake ornaments, 454.
- Santa Ana, Calif., from Birmingham, Ala., originating at Benham, Ky. Coke, 126.
- Sapulpa, Okla., from Coffeyville, Kans., and Joplin, Mo. Empty slack barrels, 496.
- Sapulpa, Okla., to Waco, Tex. Fruit jars, 668.
- Sartell, Minn., to Wichita, Kans. News print paper, 505.
- Saskatchewan, Canada, from Willamette Valley, Oreg. Lumber and forest products, 250.
- Savannah, Ga., to Emporium and Mount Union, Pa. Sulphuric acid, 674.
- Sayre, Okla., to Oklahoma-Texas state line. Standard time, 555.
- Scotia, Calif., to eastern defined territories, Colorado common points, and points east thereof. Lumber and other forest products, 738.
- Scranton, Pa., from Iowa. Potatoes, 15.

- Seattle, Wash., to East St. Louis, Ill. Sulphate of potash, 115.
 Seattle, Wash., from Holt, Ala. Cast-iron pipe, 101.
 Seattle, Wash., from Perth Amboy, N. J. Earthenware urinals, 485.
 Seattle, Wash., from Richmond, Va. Cigarettes, 201.
 Selden, Kans., to St. Louis, Mo., cleaned in transit at Beatrice, Nebr. Millet seed, 189.
 Sharon, Pa. Interchange switching, 537.
 Sharon, Pa., from Elizabethport and Bayway, N. J. Scrap iron, 521.
 Sheboygan, Wis., to Los Angeles, Calif. Chairs, 218.
 Shelbyville, Tenn., to Ottumwa, Iowa. Cotton bagging, 713 (716).
 Shenandoah, Iowa, from Council Bluffs, Iowa, originating at Cedar Creek, Nebr. Crushed stone, 429.
 Shenandoah, Pa., to Perth Amboy, N. J. Anthracite coal, 137.
 Sherwood, Oreg., to Montana, Wyoming, North Dakota, South Dakota, Nebraska, Minnesota, Wisconsin, and Michigan, and Manitoba and Saskatchewan, Canada. Lumber and forest products, 250.
 Shreveport, La., to Ensley, Ala. Sulphuric acid, 617.
 Shreveport, La., from Niagara Falls, Ontario. Cyanamid, 236.
 Shreveport, La., from Webbers Falls, Okla. Potatoes, 489.
 Silver Springs, Tenn., to Illinois, Nebraska, Iowa, and South Dakota. Cedar posts and poles, and highway piling, 25.
 Silverton, Colo., from Galveston, Tex., originating at Chrome, N. J. Mining and other machinery, 726.
 Sinnemahoning, Pa., from Alabama, Georgia, Mississippi, and South Carolina. Sulphuric acid, 11.
 Sioux City, Iowa, to Lexington and Paris, Ky. Stock cattle, 95.
 Sioux City, Iowa, from South Dakota. Sheep, 601.
 Sioux Falls, S. Dak., from La Crosse, Wis. Carbonated, nonalcoholic, cereal beverages, 103.
 Slater, Mo. Demurrage on cement originating at Continental, Mo., 579.
 Sneads, Fla., to Bainbridge, Ga. Cottonseed, 9.
 Snyder, Nebr., from Hutchinson, Kans. Salt, 21.
 Solvay, N. Y., to Hercules, Calif. Toluol, 230.
 Somerset, Ky., from Franklin, Pa. Petroleum refined oil, 140.
 South Bend, Ind. Baled shavings; demurrage, 473.
 South Bend, Ind., to Rensselaer, N. Y. Scrap iron, 551.
 South Carolina to Des Moines and Oskaloosa, Iowa. Cotton-piece goods, 713 (716).
 South Carolina to Pennsylvania. Sulphuric acid, 11.
 South Dakota. Fattening or feeding-in-transit arrangements on sheep destined to Omaha, Nebr., and Sioux City, Iowa, 601.
 South Dakota from Colorado mines. Soft coal, 679.
 South Dakota from Montana. Sheep; through routes and joint rates, 601.
 South Dakota from Willamette Valley, Oreg. Lumber and forest products, 250.
 South Milwaukee, Wis., to Waterloo, Iowa. Mineral wool, 713 (717).
 Southeastern territory from Kentucky. Onions and potatoes, 155.
 Southeastern territory to Mayfield, Ky. Cotton factory products, 326.
 Southern classification territory. Ratings on condensed and evaporated milk, 624.
 Southern furnaces to Ohio River crossings, and points north and east thereof, and to New England. Pig iron, 635.
 Southern territory to Iowa. Cotton-piece goods, 713 (714).
 Spokane, Wash. Switching charges, coal and wood, 449.
 Spokane, Wash. Warehouse rentals, 535.
 Spokane, Wash., from eastern defined territories. Commodity rates, 659.
 Spokane, Wash., from eastern defined territories. Steel plates and rivets, 667.

- Spokane, Wash., to Pitman, Kans. Pine box shooks, 581.
- Springfield, Ill., from Rice, Minn. Potatoes, 364.
- Springfield, Mass., from Helen, Ga. Lumber, 456.
- Springfield, Minn., to Illinois, Iowa, Wisconsin, Ohio, Missouri, and Indiana. Flour and flour-mill products, 216.
- Springfield, Ohio, to New York, N. Y. Machinery, 194.
- Springfield, Oreg., to Montana, Wyoming, North Dakota, South Dakota, Nebraska, Minnesota, Wisconsin, and Michigan, and Manitoba and Saskatchewan, Canada. Lumber and forest products, 250.
- Stanton, Nebr., from Hutchinson, Kans. Salt, 21.
- Stockton, Calif., from Battle Creek and Detroit, Mich., Minneapolis, Minn., and Auburn, N. Y. Steel lubricating or grease cups, 397.
- Storm Lake, Iowa, from East Chicago, Ind. Iron rods and bars, 713 (720).
- Stout, Iowa, to Pittsburgh, Scranton, and Wilkes Barre, Pa. Potatoes, 15.
- Suffern, N. Y., from Pineville, La. Lumber, 451.
- Sulligent, Ala., to Cynthiana, Ky. Lumber, 203.
- Swan Creek, Ill., from Silver Springs, Tenn. Cedar poles, posts, and highway piling, 25.
- Sweetwater, Tenn., from New Orleans, La. Uncompressed cotton, 311.
- Syracuse, N. Y., from Crossett, Ark. Pine lumber, 438.
- Syracuse, N. Y., to Lodi and Hawthorne, N. J. Red oil, 197.
- Talladega, Ala., to Pennsylvania. Sulphuric acid, 11.
- Tennessee from Falco, Ala. Yellow-pine lumber, 317.
- Tennessee to Ohio River crossings, and points north and east thereof, and to New England. Pig iron, 635.
- Tennessee to Providence, R. I. Strawberries, 167.
- Texas to Boston, Mass., there stored and subsequently exported to France. Dressed beef, 244.
- Texas from Lake Charles, La. Cypress and pine lumber and shingles, 557.
- Texas to Metropolis, Ill. Logs, lumber, and products, 376.
- Texas from Oklahoma. New jute bagging, 509.
- Texas to Oklahoma, Kansas, and Missouri. Sudan grass seed, 111.
- Texas to Port Arthur, Tex., for export. Cottonseed cake and meal, 583.
- Texas to Wichita, Kans. Hides, wool, and tallow, 356.
- Thebes, Ill., from Jennie, Ark. Hardwood lumber, 339.
- Thebes, Ill., from Pocahontas and Black Rock, Ark. Railroad ties, 518.
- Thomasville, Pa., from Emporium, Pa. High explosives, 615.
- Toledo, Ohio, from Carpenter and Otranto, Iowa. Potatoes, 493.
- Toledo, Ohio, from Coal City, Ala., diverted at Cairo, Ill., and subsequently at Carpenter, Ill. Pine lumber, 149.
- Toledo, Ohio, from Indiana, stored and subsequently reshipped to Canada. Corn, 523.
- Tonoloway, Md., to Jeannette, New Kensington, Monongahela City, and Belle Vernon, Pa. Glass sand, 704.
- Toronto, Canada, from Louisiana, reconsigned at Ramsey, Ill. Lumber, 214.
- Torrington, Wyo., to Omaha, Nebr. Cattle, sheep, hogs, and horses, 414.
- Townley, N. J. Hay; reconsignment charges, 596.
- Trenton, Nova Scotia, from Detroit, Mich., originating at Jemison, Ala. Yellow-pine lumber, 605.
- Trenton, Nova Scotia, from Georgia, Florida, and Alabama. Yellow-pine lumber, 627.
- Trosky, Minn., from La Crosse, Wis. Beer, 729.
- Troy, Ala., to Pennsylvania. Sulphuric acid, 11.

- Trunk line territory from Helen, Ga. Lumber, 456.
 Trunk line territory from West, N. C. Lumber, 121.
 Tulia, Tex., to Oklahoma City, Okla. Sudan grass seed, 111.
 Tulsa, Okla., from De Queen, Ark. Sweet potatoes, 683.
 Turner, Kans., to various destinations. Sand, 350.
 Utah to Idaho. Coal, 697.
 Utica, N. Y., from Crossett, Ark. Pine lumber, 438.
 Valdosta, Ga., to Pennsylvania. Sulphuric acid, 11.
 Van Nest, N. Y., from Illinois. Baled hay, 469.
 Van Wert, Ohio, from Carpenter and Otranto, Iowa. Potatoes, 493.
 Vandalia, Mont., from Wahkiakus, Wash. Pine lumber, 99.
 Vandergrift, Pa., from Natural Bridge and Benson Mines, N. Y. Dolomite, 187.
 Vicary, Ill., to Washington, Iowa. Slack coal, 713 (717).
 Virginia from Illinois. Baled hay, 469.
 Virginia capes, points outside of, from Newport News, Va., originating at Harold and Pikeville, Ky. Coal, 370.
 Virginia cities from Helen, Ga. Lumber, 456.
 Waco, Tex., from Oklahoma. Glass bottles, flasks, demijohns, fruit jars, fruit-jar tops, jelly glasses, and tumblers, 668.
 Waco, Tex., from Okmulgee, Okla. Window glass, 18.
 Wahkiakus, Wash., to Vandalia and Dodson, Mont. Pine lumber, 99.
 Walker County, Belt station 280, Ga. Demurrage and switching charges, 447.
 Walnut Ridge, Ark., from McComb, Miss. Contractor's outfit, 138.
 Walsenburg district, Colo., to Kansas. Pea and slack coal, 392.
 Ware, Mass., to Oskaloosa, Iowa. Cotton-piece goods, 713 (716).
 Washington to destinations east of the Rocky Mountains. Minimum weights on lumber, 571.
 Washington, D. C., to Jacksonville, Fla. Condensed milk, 443.
 Washington, Iowa, from Brookport, Ill., and Nashville, Tenn. Mussel shells, 713 (717).
 Washington, Iowa, from Vicary, Ill. Slack coal, 713 (717).
 Waterbury, Conn., from Berkeley Springs, W. Va. Inside-door protection for glass sand, 475.
 Waterloo, Iowa, from Freeport, Ill. Gas engines, 713 (717).
 Waterloo, Iowa, from Greenfield, Ohio. Sweat pads, 713 (717).
 Waterloo, Iowa, from South Milwaukee, Wis. Mineral wool, 713 (717).
 Watford, N. Dak., from Bonners Ferry and Cœur d'Alene, Idaho. Fir and pine lumber, 221.
 Waucoma, Iowa, to Midland, S. Dak. Emigrant movables, 205.
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 Webbers Falls, Okla., to Shreveport, La. Potatoes, 489.
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 Weirton, W. Va., from Allegheny, Pa. Wrought iron annealing boxes, 525.
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 Wellsburg, Iowa, to Pittsburgh, Scranton, and Wilkes-Barre, Pa. Potatoes, 15.
 West, N. C., to Richmond, Va., Pennsylvania, and New Jersey. Lumber, 121.
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 West Sheffield, Pa., to Belvidere, N. J., later forwarded to Netcong, N. J. Lumber and lath, 465.
 Western trunk line territory from Rice, Minn. Potatoes, 364.
 Wichita, Kans., from Minnesota, Michigan, and Wisconsin. News print paper, 505.
 Wichita, Kans., from Oklahoma and Texas. Hides, wool, and tallow, 356.

- Wichita, Kans., from St. Louis, Mo., Peoria and Chicago, Ill., and Portsmouth, Ohio. Table tops, 586.
- Wichita, Kans., to San Angelo, Tex. Standard time, 555.
- Wilkes-Barre, Pa., from Iowa. Potatoes, 15.
- Willamette Valley, Oreg., to Montana, Wyoming, North Dakota, South Dakota, Nebraska, Minnesota, Wisconsin, and Michigan, and Manitoba and Saskatchewan, Canada. Lumber and forest products, 250.
- Wilsonville, Nebr., from Silver Springs, Tenn. Cedar poles, posts, and highway piling, 25.
- Windom, Kans., from New Orleans, La. Cypress lumber and laths, 114.
- Windsor, Ontario, to and from Detroit, Mich. Operation of ferry boats, 436.
- Winston-Salem, N. C., from East Point and Atlanta, Ga. Feldspar, 124.
- Wisconsin from Springfield, Minn. Flour and flour mill products, 216.
- Wisconsin to various destinations. Potatoes; refrigerator and insulated cars, 335.
- Wisconsin to Wichita, Kans. Newsprint paper, 505.
- Wisconsin from Willamette Valley, Oreg. Lumber and forest products, 250.
- Woodhaven, La., to Providence, R. I. Strawberries, 167.
- Woodhull, Ill., from Silver Springs, Tenn. Cedar poles, posts, and highway piling, 25.
- Woodward, Ala., to Hercules, Calif. Toluol, 230.
- Wyoming to Idaho. Coal, 697.
- Wyoming from Willamette Valley, Oreg. Lumber and forest products, 250.
- Yoakum, Tex., from Muskogee, Okla. New jute bagging, 509.

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ABSORPTION. *See also* SWITCHING.

Finding in 38 I. C. C., 510, that the Muncie & Western R. R. is a common carrier and refusal of trunk lines serving Muncie to absorb its switching charges to and from Ball Bros. Glass Works and Gill Bros. Clay Pot Works, while absorbing such charges of the Muncie Belt and the Lake Erie Belt to and from the same industries, is unduly prejudicial, adhered to. Reparation denied. Ball Bros. Mfg. Co. v. C., C., C. & St. L. Ry. Co. 418 (422).

Refusal of the S. P. Co. having line haul to absorb switching charges on interstate noncompetitive carload traffic from or to complainant's plant on a track connecting with the terminals of the A., T. & S. F. Ry. in San Francisco while absorbing switching charges on similar traffic of a competitor on a track connecting with, and located on a belt line owned and operated by the state of California, found unduly prejudicial. California Canneries Co. v. S. P. Co. 500 (503).

ACCOUNTING RULES.

Accounting rules of the Commission provide that interest and taxes during construction, expenses incident to organization, including fees paid to promoters, and other general expenditures may be included in the cost of the property. City of East Liverpool, Ohio v. S., E. L. & B. V. T. Co. 563 (567).

ACT OF GOD.

Average agreement provided for termination "if payment unnecessarily delayed or declined." By reason of a flood at Dayton embargo was placed. When embargo lifted, cars were bunched and could not be unloaded within free time. Demurrage accrued and payment refused, whereupon agreement was terminated. *Held*: As rules made no provision for detention on account of bunching resulting from an act of God, charges lawfully accrued and carrier justified in terminating agreement. Davis Sewing Machine Co. v. P., C., C. & St. L. R. R. Co. 191.

ACT TO REGULATE COMMERCE.

Remains in full force and effect except in so far as it may be inconsistent with the provisions of the federal control act or other acts applicable to federal control or with any order of the President. Johnston v. A., T. & S. F. Ry. Co. 356 (361).

Since the amendment of 1910 any person can, upon making a sufficient showing of unreasonableness or unlawful discrimination, secure the suspension of any proposed rate. Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co. 635 (643).

By amendment of June 29, 1906, the Commission was for the first time given power to prescribe a reasonable maximum rate for the future. *Id.* (643).

By amendment of June 29, 1906, the Congress undertook to remove such claims from the operation of the varying state laws and subject them to limitations of its own creation, operating alike in all the states. *Id.* (643).

The federal control act stated the rules which govern rates made by the Director General, and the act to regulate commerce governs defendants that are not under federal control. Pacific Lumber Co. v. N. W. P. R. R. Co. 738. (768).

ADDITIONAL CHARGE. *See* SWITCHING.

ADDITIONAL SERVICE.

Where a reasonable rate is prescribed for a transportation service, reparation will not be awarded to the basis of that rate on shipments which have been diverted or reconsigned, but there will be taken into consideration a reasonable maximum charge for the additional service performed. *Advance Lumber Co. v. S. A. L. Ry. Co.* 149 (150).

ADJUSTMENT OF RATES. *See also* RELATIVE ADJUSTMENT.

No carrier has the right so to adjust rates on its own lines as unduly to prejudice shippers on other lines or to deprive such shippers of reasonable and just rates, merely through a desire to serve shippers on its own lines. *Willamette Valley Lumbermen's Asso. v. S. P. Co.* 250 (261).

Rates on lumber and other forest products from certain points on the Northwestern Pacific R. R. north of Willits, Calif., to points in eastern defined territories, Colorado common points and east, found unjust, unreasonable, and unduly prejudicial to extent that they exceeded rates from California coast group points. *Pacific Lumber Co. v. N. W. P. R. R. Co.* 738 (760, 764).

ADMINISTRATIVE RULINGS.

Rule 3 of Rules of Practice, cited. *Reliance Mfg. Co. v. I. C. R. R. Co.*, 607 (608)

Rule 15 of Rules of Practice, cited. *Lamb-Fish Lumber Co. v. Y. & M. V. R. R. Co.* 6 (7).

Rule 5 (b) of Tariff Circular 18-A, cited. *Weil v. C., M. & St. P. Ry. Co.* 95 (96). *Virginia-Carolina Chemical Co. v. M. C. R. R. Co.* 172 (173). *Advance Bag Co. v. C., C., C. & St. L. Ry. Co.* 467 (468). *Reliance Mfg. Co. v. I. C. R. R. Co.* 607 (608).

Rule 56 of Tariff Circular 18-A, cited. *Aetna Explosives Co. v. S. Ry. Co.* 633 (634).

Rule 77 of Tariff Circular 18-A, cited. *Loveland & Hinyan Co. v. D. & H. Co.* 15 (16). *Herrmann & Co. v. N. Y., N. H. & H. R. R. Co.* 118 (119). *Sunderland Bros. Co. v. C., B. & Q. R. R. Co.* 185. *Kentucky Lumber Co. (Inc.) v. St. L.-S. F. Ry. Co.* 203 (204). *Bartlett-Collins Glass Co. v. A., T. & S. F. Ry. Co.* 496 (498). *Chamber of Commerce, Houston, Tex. v. M. L. & T. R. R. & S. Co.* 653 (657). *Michel Brewing Co. v. C., B. & Q. R. R. Co.* 729 (730).

ADMISSION.

Through rates admitted to be unreasonable to extent they exceeded combination of intermediate rates, but admission of carrier that a rate is unreasonable is not conclusive as to the reasonableness of that rate. *Sunderland Brothers Co. v. C., B. & Q. R. R. Co.* 21 (22).

ADVANCE IN RATES. *See also* APPLICATION.

In General: If it be taken that the action of the Director General by Order No. 28 merely imposed a surcharge, and that only the increase is within the purview of the federal control act, then the increase applies equally and does not alter the general effect of the rate structure, and the imposition of a flat increase would not eliminate its obnoxious features. *Pacific Lumber Co. v. N. W. P. R. R. Co.* 738 (770).

Acid, sulphuric: Increased rates on, in tank-car loads, from Savannah, Ga., to Emporium and Mount Union, Pa., found justified in that they compare favorably with rates from acid-producing points in c. f. a. and trunk line territories and other points to same destinations. *Aetna Explosives Co. v. S. A. L. Ry. Co.* 674.

Coal: Increased rates on bituminous coal from certain mines in the southern Illinois coal fields to Cape Girardeau, Mo., found justified inasmuch as they compare favorably with higher rates for shorter distances in the same general territory and elsewhere. *Cape Girardeau Commercial Club v. I. C. R. R. Co.* 105.

ADVANCE IN RATES—Continued.

Coal: Increase in rates on soft coal from mines on the Denver & Salt Lake R. R. to points in Kansas, Nebraska, Missouri, Iowa, and South Dakota on the lines of connecting carriers participating in the joint rates, made to meet a defined and accute emergency, should inure to the benefit of the Denver & Salt Lake D. & S. L. R. R. Co. v. C., B. & Q. R. R. Co. 679.

Cottonseed cake and meal: Following *Cottonseed Products to Port Arthur, Tex.*, 38 I. C. C., 378, increased rates on cottonseed cake and meal from certain points in Texas to Port Arthur, Tex., for export, found not justified. Reparation awarded. Texas Export & Import Co. v. A. & S. Ry. Co. 583.

Express rates: Certain data and recommendations regarding a proposed increase in express rates reported upon for the Director General of Railroads. In re *Increases in Express Rates*, 263.

Iron, scrap: Commodity rate on, from South Bend, Ind., to Rensselaer, N. Y., increased to equal class rate approved in *The Fifteen Per Cent Case*, 45 I. C. C., 303, found justified. Kaufman & Sons Co. v. N. Y. C. R. R. Co. 551.

Lumber: Rates on, from Bonners Ferry and Coeur d'Alene, Idaho, to certain destinations in Montana and North Dakota, which were increased following readjustment of rates in compliance with finding made in 38 I. C. C., 268. 39, I. C. C., 568, found justified. Bonners Ferry Lumber Co. v. G. N. Ry. Co. 221 (224).

Lumber: Increased rates on pine lumber from Crossett, Ark., to Baltimore, Md., Philadelphia, Pa., New York, N. Y., Ottawa, Ont., and other eastern destinations, higher than from other points in the same group, found reasonable. Crossett Lumber Co. (Inc.) v. A. & L. M. Ry. Co. 438.

Passenger fares: Single-trip fare of 10 cents and commutation fare of \$1 for 14 rides between East Liverpool, Ohio, and Chester, W. Va., approved. City of East Liverpool, Ohio, v. S., E. L. & B. V. T. Co. 563 (569).

Sand and gravel: Rates on, from Phalanx and Geauga Lake, Ohio, to points in the Pittsburgh, Pa., district, increased October 10, 1916, found justified. Portage Silica Co. v. E. R. R. Co. 241.

Urinals: On earthenware urinals, l. c. l., from Perth Amboy, N. J., to Seattle, Wash., commodity rate canceled leaving in effect increased class rate, which is found not justified and unreasonable to extent it exceeded subsequently established l. c. l. commodity rate on earthenware and chinaware. Reparation awarded. Fords Porcelain Works v. L. V. R. R. Co. 485.

ADVANTAGES AND DISADVANTAGES.

If complainants enjoy advantages in accessibility of supplies, location of mills, and cost of production which overcome their disadvantage in freight rates, it is not the province of carriers to take conditions of that character into account in adjusting their rates between competing localities. Pacific Lumber Co. v. N. W. P. R. R. Co. 738 (742).

AGENT. See also ERROR; MISQUOTATION OF RATE..

Shippers and carriers alike are charged with knowledge of tariff provisions, and the Commission is without authority to award reparation or authorize waiver of undercharges solely upon a showing that erroneous advice as to loading was given by defendant's agent. United Shoe Machinery Co. v. B. & M. R. R. 28 (30).

AGGREGATE OF INTERMEDIATE RATES. See THROUGH AND LOCAL.**AGREEMENT. See CONTRACT.****ALASKA.**

Congress has not vested any discretion in the Commission as to the standards of time to be observed in Alaska. Standard Time Zone Investigation, 273 (285).

ALDRICH ACT.

All intrastate class and commodity rates on live stock were reduced 15 per cent by the so-called Aldrich act of the Nebraska legislature. *Town of Torrington v. C., B. & Q. R. R. Co.* 414 (416).

ALLOWANCES. See also DIVISIONS.

Carriers are entitled, in addition to the actual cost of the ice furnished, to compensation for haulage, cost of supervision, repairs to bunkers, and extra switching, and to an allowance for depreciation of cars, damage claims, and profit. *Loretz, Pegram & Co. v. S. P. Co.* 158 (159, 160).

Failure of defendant to provide or make allowances for inside door protection on shipments of glass sand, in bulk, from Berkeley Springs, W. Va., to points in official classification territory, found not unreasonable or unduly prejudicial of producers of glass sand at points in c. f. a. territory. *Morgan County Sand Producers' Asso. v. B. & O. R. R. Co.* 475.

Commission does not approve of inequalities existing between carriers in trunk line and c. f. a. territories in allowances and provisions governing inside door protection of freight in bulk. *Id.* (476).

Citation to cases decided subsequent to the *Car Spotting Charges*, 34 I. C. O. 609, in which the Commission fixed allowances for switching to and from track, of the line-haul carrier performed by the industry itself either directly or through common-carrier industrial line. *National Malleable Castings Co. v. P. & L. E. R. R. Co.* 537 (541).

A determination that it is the duty of the line-haul carrier to perform a particular switching and spotting service, for the performance of which by the industry an allowance should be paid, presupposes that the nature of the industry is such as to permit the performance of that service by the carrier. *Id.* (542).

Refusal of defendants to make an allowance to complainant for the interchange switching of cars to and from its plant at Sharon, Pa., while performing such service without additional charge for other foundries, found to result in undue prejudice. *Id.* (543).

Increased rates resulting from refusal of defendants to compensate complainant for expense of spotting cars moving interstate to and from its plant at Farrell, Pa., while performing a like service, without charge, for competitors similarly situated, found to subject complainant to undue prejudice and disadvantage. Reparation awarded. *Sharon Steel Hoop Co. v. P. Co.* 545.

No allowance made for stakes and supports on shipments of lumber as provided for in tariff, resulted in overcharge. *Brown & Sons Lumber Co. v. O., R. I. & P. Ry. Co.* 549.

On theory that it is the duty of carriers to protect freight and that a shipper who uses complainant's steel container performs that service for the carrier, complainant contends that its container is an instrumentality of transportation for the use of which shippers are entitled to an allowance under section 15. *Held:* No basis for such an allowance. *Pneumatic Scales Corp. v. A. & R. R. R. Co.* 686 (695-696).

ANALOGOUS ARTICLES. See also COMPARATIVE RATES.

Rubber glass is said to be analogous to and used for the same purposes as wired glass, of about the same value, less hazardous to transport, and loads about the same. *American Bridge Co. v. N. Y., N. H. & H. R. R. Co.* 181 (182).

Fifth-class rate on wrought-iron annealing boxes from Allegheny, Pa., to Weirton, W. Va., found unreasonable and unduly prejudicial to extent it exceeded lower commodity rate maintained on cast-iron annealing boxes. Reparation awarded. *Independent Bridge Co. v. P. R. R. Co.* 525.

APPENDIX.

1. Ice wastage, 1914 over 1916, six roads. *National Poultry, Butter & Egg Asso. v. B. & O. S. W. R. R. Co.* 34 (52).
2. Instructions relative to icing of cars, June, 1914, July, 1917. *Id.* (53).
3. Ascertained costs of terminal service and five-mile haul. *Id.* (54).
4. Statement showing the average direct terminal costs per hundred pounds for handling l. c. l. freight, including "l. c. l. dairy freight," based upon costs—C., C., C. & St. L. Ry. Co.; N. Y. C. R. R. Co. *Id.* (55).
5. Same as appendix 4—by the Pennsylvania system. *Id.* (59).
6. Statement showing return per gross ton (lading, equipment, and ice) on various commodities from Chicago to New York, based upon average loading presented by the carriers in the *Five Per Cent Case*. *Id.* (62).
7. Statement showing return per car-mile on various commodities from Chicago to New York, based upon average loading presented by the carriers in *Five Per Cent Case*. *Id.* (63).
8. Comparison between rates on dairy freight and rates on fruits and vegetables. *Id.* (48, 64).
9. Showing increased carload revenue for transportation of shipments of dairy products in refrigerator cars from Chicago to New York. *Id.* (65).
10. Statement showing effect of increased earnings on dairy products. *Id.* (66).
11. Rate and revenue of dairy products versus other food products from Chicago, Ill., to points indicated. *Id.* (67).
12. Comparison of revenue return and icing on dairy products, based on a 20,000-pound minimum, versus other food products at minimum weight indicated. *Id.* (68).
13. Statement showing increases and percentages of increases in rates on dressed poultry, butter, and cheese, from Chicago, Ill., to points in c. f. a. and eastern trunk line territories. *Id.* (69).
14. Rates and minimum on articles transported in refrigerator cars with car-mile and ton-mile earnings as compared with car-mile and ton-mile earnings on poultry, butter, eggs, and cheese, Chicago to New York. *Id.* (70).
1. Memorandum of Director General to the Commission in regard to increase in express rates. In re *Increases in Express Rates*, 263 (270).
2. Statement showing analysis of express matter carried by all express companies for the month of April, 1917. *Id.* (271).
3. Statement showing effect of proposed increase in rates on basis of distribution of 18,000,000,000 pounds to zones and classes on basis of analysis of traffic for six selected days in April, 1917. *Id.* (272).
- 1 to 7. Detailed description and sketch maps outlining boundaries prescribed for the various standard time zones. *Standard Time Zone Investigation*, 273 (287-308).

APPLICATION.

Fifteenth section: General Order No. 28 of the Director General having intervened to fix the rate for the future, no action may now be taken by the Commission on this fifteenth section application. *Darby Coal Sales Co. v. C. & O. Ry. Co.* 370 (372).

ASSEMBLING IN TRANSIT.. See *Transit Arrangements (Inspection and Assembling)*.

AVERAGE AGREEMENT.

Provided for termination "if payment unnecessarily delayed or declined." By reason of a flood at Dayton, embargo was placed. When embargo lifted, cars were bunched and could not be unloaded within free time. Demurrage accrued and payment refused, whereupon agreement was terminated. *Held*: As rules made no provision for detention on account of bunching resulting from an act of God, charges lawfully accrued and carrier justified in terminating agreement. *Davis Sewing Machine Co. v. P., O., C., & St. L. R. R. Co.* 191.

AVERAGE AGREEMENT—Continued.

One of the purposes of the average agreement is, by credits for cars promptly released, to take care of detention caused by bunching and weather interference. *Id.* (193).

It would seem a strange principle that would permit a carrier to decline, under the average agreement, responsibility for the bunching of cars by its own act or neglect, and at the same time hold it accountable for bunching resulting from no fault of its own. *Id.* (193).

BACK HAUL.

On shoe machinery and parts from Beverly, Mass., to interstate destinations, at request of defendant's agent cars sent to Salem for sorting and forwarding, which necessitated a back haul through Beverly. Tariff provided for charges in cases of back haul from stations at which transfer service was in fact performed. *Held:* Ferry car charges from Beverly to Salem not shown unreasonable. *United Shoe Machinery Co. v. B. & M. R. R.* 28.

Finding in original report, 42 I. C. C., 730, that movement of apples from Kansas City, Mo., to Kansas City, Kans., thence back hauled to Kansas City, Mo., in the course of transportation from Eugene, Ark., to Kansas City, Mo., was an unwarranted, uncalled for, and unnecessary service, reversed on rehearing. *Cardwell v. C., R. I. & P. Ry. Co.* 390.

BAGGAGE CARS.

Under contract specifying termination by either party on 60 days' notice, express companies supplied baggage cars, which complainants equipped for transporting live fish. Express companies requested to return cars, whereupon agreement terminated. Prayer that defendant cease and desist from taking cars and to continue to furnish. *Held:* Issue not within Commission's jurisdiction. *Lay v. Amer. Exp. Co.* 373.

BELT LINE.

State Board of Harbor Commissioners of San Francisco Belt Railroad held to be a common carrier. *California Canneries Co. v. S. P. Co.* 500 (501, 504).

BILL OF LADING. See also EXPORT BILL OF LADING.

On lumber arriving at Belvidere, N. J., from West Sheffield, Pa., on May 8, 1916, consignee failed to accept shipment. Complainant, on June 27, ordered car forwarded to Netcong, N. J., but shipment not forwarded until July 1, on which date bill of lading was surrendered. *Held:* Demurrage not shown unreasonable. *Central Pennsylvania Lumber Co. v. T. V. Ry. Co.* 465.

BILLING. See also MISBILLING.

On pine lumber from Wahkiakus, Wash., to Vandalia and Dodson, Mont., shippers in order to secure the benefit of lower rate, required to certify on bill of lading that cars were loaded to full visible capacity. No such notation made and legally applicable rate not shown unreasonable or discriminatory. *Good-Hopkins Lumber Co. v. G. N. Ry. Co.* 99.

Complainant's agent erroneously billed a l. c. l. shipment of old rails from Bowling Green, Ohio, to Hudson, N. Y., as a c. l. shipment. *Held:* Under circumstances a c. l. shipment, and rate legally applicable not unreasonable. Shipment found overcharged and reparation awarded. *Zelnicker Supply Co. v. T. & O. C. Ry. Co.* 133.

Rates assessed on basis of billing changed at destination on old boiler flues and scrap boiler plate, originally billed as scrap iron, from Port Arthur, Tex., to St. Louis, Mo., found legally applicable. *Schwartz v. St. L.-S. F. Ry. Co.* 145.

Billing on two carloads of "cut stone" from Carthage, Mo., to Pasadena, Cal., changed at destination to "marble" and rates applicable to marble assessed. *Held:* Shipments overcharged, as they are found to have consisted of cut stone. Reparation awarded. *Carthage Marble & White Lime Co. v. M. P. R. R. Co.* 619.

BLANKET RATES. *See also* GROUP RATES.

Carriers must not discriminate in disregarding distance and other factors and blanket an extensive territory served by their own lines, and in some instances by independent lines as well, and refuse to accord similar treatment to point-served by other proprietary or nonproprietary lines with the general geographical and distance limits of the blanket territory. *Pacific Lumber Co. v. N. W. P. R. R. Co.* 738 (759).

BOAT LINES.

Application of Grand Trunk Ry. Co. of Canada to continue ownership and operation of car ferries across the Detroit River, between Detroit, Mich., and Windsor, Ont., granted. *Control of Water Carriers by Railroad Carriers*, 436.

Boat lines which bring logs to the ports are not subject to the act to regulate commerce and have no tariffs on file with the Commission, and rates shown from the ports are not, properly speaking, proportional rates. *Pacific Lumber Co. v. N. W. P. R. R. Co.* 738 (746).

BOTH DIRECTIONS.

On a shipment of oak heading, returned from Indianapolis, Ind., to Batesville, Ark., due to refusal by consignee, joint class D rate for return movement higher than commodity rate applicable in opposite direction not shown unreasonable, unjustly discriminatory, or unduly prejudicial. *Little Rock Freight Bureau v. M. P. Ry. Co.* 23.

The mere fact that the rate in one direction exceeded the rate between the same points in the opposite direction does not demonstrate the unreasonableness of the higher rate. *Id.* (24).

First-class rate on saws from San Francisco, Calif., to Chicago, Ill., found unreasonable to extent it exceeded lower commodity rate applicable in the opposite direction and subsequently established over route of movement. *Reparation awarded. Simonds Mfg. Co. v. A., T. & S. F. Ry. Co.* 131.

BRANCH LINE POINTS.

Maintenance by the O.-W. R. R. & Nav. Co. of main-line rates from Tono, Wash., on its own branch line, while failing to join with the Eastern Ry. & Lumber Co. in the maintenance of such rates from Empress Mine, did not constitute undue prejudice. *Empress Coal Co. v. O.-W. R. R. & N. Co.* 345 (349).

BUNCHING.

Average agreement provided for termination "if payment unnecessarily delayed or declined." By reason of a flood at Dayton, embargo placed. When embargo lifted cars were bunched and could not be unloaded within free time. Demurrage accrued and payment refused, whereupon agreement was terminated. *Held:* As rules made no provision for detention on account of bunching resulting from an act of God, charges lawfully accrued and carrier justified in terminating agreement. *Davis Sewing Machine Co. v. P., C., C. & St. L. R. R. Co.* 191.

It would seem a strange principle that would permit a carrier to decline, under the average agreement, responsibility for the bunching of cars by its own act or neglect, and at the same time hold it accountable for bunching resulting from no fault of its own. *Id.* (193).

BURDEN OF PROOF.

Evidence not sufficient to sustain allegation that charges on baled hay from certain points in Illinois to certain points in Massachusetts, New York, Pennsylvania, and Virginia were excessive in that they exceeded charges based on weight obtained at destination. Complaint dismissed. *Toberman, Mackey & Co. v. C. & E. I. R. R. Co.* 469.

Difference in proof required to sustain an award of reparation under a finding of undue preference or prejudice and a finding that a rate is unreasonable *per se.* *Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co.* 635 (645).

CANADA.

Sixth-class rates on corn from points in Indiana to Canada found unreasonable to extent they exceeded the aggregate of intermediate rates in effect to and from Detroit, Mich. Reparation awarded. *Young Grain Co. v. T., St. L. & W. R. R. Co.* 523.

On yellow-pine lumber from Georgia, Florida, and Alabama points to New Glasgow and Trenton, Nova Scotia, *Held*: Commission can not prescribe maintenance of joint through rates, but rates legally applicable to Montreal for that portion of the transportation within the United States not shown unreasonable. *Eastern Car Co. (Ltd.) v. C. G. Rys.* 627.

CANCELLATION.

Prior to November 20, 1912, commodity rate of \$1.15 per net ton applied on fresh vegetables from Oakland and Antioch, Calif., to Stockton, Calif., and on that date rate from Antioch, which point is intermediate to Stockton, was cancelled, leaving in effect class C rate lower than rate from Oakland. Contention that \$1.15 rate still applies from Antioch to Stockton not sustained. *Martin Brokerage Co. v. S. P. Co.* 91 (92).

CAPACITY.

On alcohol, in tank-car loads, from Henderson, Ky., to Mount Union and Emporium, Pa., cars were loaded to capacity. Charges assessed based on 50,000-pound minimum, established to place Henderson on a competitive basis with other alcohol-producing points, not shown unreasonable. *Kentucky Peerless Distilling Co. v. L., H. & St. L. Ry. Co.* 209.

Only 19.2 per cent of the tank cars in the United States have a gallonage capacity of less than 50,000 pounds. *Id.* (210).

CAR DETENTION.

Charges at Harlem River, New York, N. Y., on potatoes from points in Maine on the Bangor & Aroostook R. R. not shown unreasonable but found unduly prejudicial to complainants in favor of competitors who received shipments from points in Maine on the Boston & Maine and Maine Central. Reparation awarded. *New York & New Jersey Produce Co. v. N. Y., N. H. & H. R. R. Co.* 399.

CAR DISTRIBUTION.

Allegation of unreasonableness and undue preference in the distribution of logging cars at Camp Tolfree, Mich., during times of car shortage held not to be sustained. *Diamond Lumber Co. v. C., M. & St. P. Ry. Co.* 78 (88).

The situation as to coal cars differentiated, and conclusion reached that the distribution of these logging cars by fixed rules would be impracticable, and that the discretion of the chief train dispatcher or other employee of the defendant must finally govern upon the facts of this case. *Id.* (87).

Contention that defendant failed to supply sufficient cars to transport lumber from Autaugaville, Ala., and that it unduly preferred complainants' competitors, *Held*: Not shown unduly prejudicial, and under the circumstances it could not with propriety be found that defendant should respond in damages for inability to furnish a full car supply. *Oden-Elliott Lumber Co. v. A. C. Ry.* 403 (411).

CAR FERRIES.

Application of Grand Trunk Ry. Co. of Canada to continue ownership and operation of car ferries across the Detroit River, between Detroit, Mich., and Windsor, Ont., granted. *Control of Water Carriers by Railroad Carriers*, 436.

CAR FITTING.

Bunks and chains: Record affords no lawful basis for requiring defendant to equip flat cars engaged in the logging traffic on its Superior division with bunks and chains, or with patented stakes for securing the load. *Diamond Lumber Co. v. C., M. & St. P. Ry. Co.* 78 (88).

CAR FITTING—Continued.

Doors: Failure of defendant to provide or make allowances for inside door protection on glass sand, in bulk, from Berkeley Springs, W. Va., to points in official classification territory found not unreasonable or unduly prejudicial of producers of glass sand at points in c. f. a. territory. *Morgan County Sand Producers' Asso. v. B. & O. R. R. Co.* 475.

Doors: Commission does not approve of inequalities existing between carriers in trunk line and c. f. a. territories in allowances and provisions governing inside door protection of freight in bulk. *Id.* (476).

CAR FURNISHING.

On horses from Pittsburgh, Pa., to Jersey City, N. J., defendant could not furnish commercial horse cars as requested. Ordinary stock cars, without stalls, were accepted. *Held:* Defendant under no legal obligation to comply with order for special equipment within short time necessary to meet complainant's requirements, and express charges legally applicable on basis of cars accepted not shown unreasonable. *Northwestern Trading Co. (Inc.) v. Adams Exp. Co.* 211.

A carrier is entitled to a reasonable time in which to furnish special equipment, and unless given reasonable notice of shipper's requirements it is not liable for damages resulting from failure to furnish such equipment. *Id.* (213).

On chairs, s. u. and k. d., from Sheboygan, Wis., to Los Angeles, Calif., 50-foot car ordered, but two 40-foot cars furnished. Charges based on commodity rate with 12,000-pound minimum on each car assessed. *Held:* Shipment could have been loaded in large car and charges found illegal. Reparation awarded. *Phoenix Chair Co. v. C. & N. W. Ry. Co.* 218.

Without passing upon jurisdiction to award damages for failure to furnish cars upon reasonable request, as required by section 1, it may be said that under the circumstances of record it could not with propriety be found that defendant should respond in damages for its inability to furnish a full car supply. *Oden-Elliott Lumber Co. v. A. C. Ry.* 403 (411).

Reparation claimed for damages resulting from loss of profits where shipper holding certain timber deeds was obliged to dispose thereof, due to alleged failure of carrier to furnish cars for transportation, denied. *Id.* (409).

Rules under which carriers refuse to accept orders for cars for the carriage of lumber of cubical capacity of less than 2,400 cubic feet, or of more than certain specified cubic capacity, while tariffs named graduated minima for cars of less or greater capacity when tendered for carrier's convenience, *Held,* Unreasonable and unduly prejudicial. *Feltus Lumber Co. v. G. N. Ry. Co.* 571 (576).

The Commission has consistently held that "where a carrier by its tariffs specifies a certain minimum for a car of a certain size, it thereby tenders to the public that rate of transportation;" and that where for its own convenience it tenders a car of different capacity from that ordered by the shipper the carrier must protect the minimum applicable to the car ordered. *Id.* (575).

Where a car ordered is of unusual character or size, the Commission has approved the requirement that reasonable advance notice may be required of the shipper. *Id.* (575).

It is unlawful for carriers to disclaim liability to furnish on shippers' demand, cars of a given capacity and at the same time to insist upon their right for their own convenience to tender cars of such capacity as the shipper is forbidden under the tariffs lawfully to order. *Id.* (576).

The publication of graduated carload minima implies an obligation upon carriers to furnish, upon reasonable notice, cars of corresponding capacity. *Id.* (576).

Failure to furnish equipment of the size that may be lawfully ordered, upon reasonable notice. *Held:* Carriers are bound to protect by unambiguous rules the appropriate minima applicable to the size of the equipment ordered. *Id.* (578).

CAR-MILE EARNINGS. See EARNINGS.

CAR SPOTTING. See SPOTTING CARS.

CAR SUPPLY.

Power of Commission to require defendant to increase its supply of cars seems doubtful, in view of *United States v. P. R. R. Co.*, 242 U. S., 208. *Diamond Lumber Co. v. C., M. & St. P. Ry. Co.* 78 (85).

CARETAKERS.

Upon rehearing, *Held*: Reasonable rule for the transportation of caretakers accompanying one-car shipments of cattle, calves, hogs, and sheep from Missouri points to East St. Louis and National Stock Yards is to provide for their free transportation to market only. *Dimmitt-Caudle-Smith Live Stock Commission Co. v. C., B. & Q. R. R. Co.* 71 (77).

CARLOAD AND LESS-THAN-CARLOAD.

Theory of carriers as to the reasonableness between. *National Poultry, Butter & Egg Asso. v. B. & O. S. W. R. R. Co.* 34 (50).

Complainant's agent erroneously billed a l. c. l. shipment of old rails from Bowling Green, Ohio, to Hudson, N. Y., as a c. l. shipment. *Held*: Under circumstances a c. l. shipment and rate legally applicable not shown unreasonable. Shipment found overcharged and reparation awarded. *Zelnicker Supply Co. v. T. & O. C. Ry. Co.* 133.

Charges and tariff rule governing movement of meat in peddler cars, l. c. l., from Chicago, Ill., to points in Indiana and Ohio, found unreasonable to extent they exceeded charges at c. l. rates applicable to dressed beef, minimum 20,000 pounds, in effect from Chicago to farthest destination of any consignment in each car. Reparation awarded. *Wilson & Co. (Inc.) v. C., C., C. & St. L. Ry. Co.* 153.

CARLOAD MINIMUM. See MINIMUM WEIGHT.**CARS.**

By established usage with reference to property, the word "premises" contemplates real estate and its appurtenances, and it is clear that it would not include such ambulatory personalty as a railroad car. *Dow Chemical Co. v. P. M. R. R. Co.* 1 (2).

The mere fact that in exceptional instances demurrage charges on cars held for loading, but not used, are greater than charges which would accrue for detention and transportation if loaded and switched to a destination a short distance beyond the loading point, does not prove that the rule or charges thereunder are unreasonable. *Chattanooga Sewer Pipe & Fire Brick Co. v. B. Ry. Co.* of C. 447 (448).

Rule withdrawing from the carriage of lumber, cars of a less capacity than 1,651 cubic feet, found justified. *Feltus Lumber Co. v. G. N. Ry. Co.* 571 (572).

CARS MOVING ON OWN WHEELS.

On a locomotive and tender, moving on their own wheels, under steam from Algoma, Oreg., to Klamath Falls, Oreg., and not under steam from Klamath Falls to Dunsmuir, Calif., rate charged for that portion of the haul from Klamath Falls to Dunsmuir found unreasonable. Reparation awarded. *Algoma Lumber Co. v. S. P. Co.* 529.

CIRCUMSTANCES AND CONDITIONS.

If special circumstances and conditions surround the movement of a commodity between particular points which do not apply between other points, the conditions are met by the establishment of commodity rates. *Helvetia Milk Condensing Co. v. A. & V. Ry. Co.* 625 (626).

CLAIMS. See also LIMITATION OF ACTION.

Claim for refund of freight charges collected on shipment made to replace one damaged in transit held to be a matter for adjustment as an integral part of claim for property damage. *Fords Porcelain Works v. L. V. R. R. Co.* 485.

By the amendment of June 29, 1906, the Congress undertook to remove Claims arising from violations of the act from the operation of the varying state laws and subject them to limitations of its own creation, operating alike in all the states. *Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co.* 635 (643).

CLASS AND COMMODITY RATES. *See also* **CLASS RATES; COMMODITY RATES.**

Fifth-class rates on gasoline and other volatile petroleum oils from Mobile, Ala., to Chattanooga and Knoxville, Tenn., and from Gretna, La., to Mobile and Gadsden, Ala., and Knoxville, found unreasonable to extent they exceeded commodity rates reestablished via routes of movement. Reparation awarded. *Gulf Refining Co. of La. v. L. & N. R. R. Co.* 4.

In 44 I. C. C., 660, rates on cotton seed from Florida to Bainbridge, Ga., found unreasonable to extent components to River Junction, Fla., exceeded rates in effect prior to movement and subsequently established. Upon rehearing, rates legally applicable found unreasonable to same extent, and that the component from River Junction to Bainbridge, exceeded the class M rate. Reparation awarded. *Bainbridge Oil Co. v. M. & B. R. R. Co.* 9.

Class rates on potatoes from certain points in Iowa to Pittsburgh, Scranton, and Wilkes-Barre, Pa., found unreasonable to extent they exceeded subsequently established commodity rates. Reparation awarded. *Loveland & Hinyan Co. v. D. & H. Co.* 15.

Rates on salt from Hutchinson, Kans., to points in Nebraska, not shown unreasonable or otherwise in violation of the act, inasmuch as in the absence of specific through rates, commodity distance rates, which were equal to or higher than the rates assessed, would have taken precedence over the lower class rates in effect. *Sunderland Bros. Co. v. C., B. & Q. R. R. Co.* 21.

Prior to November 20, 1912, commodity rate of \$1.15 per net ton applied on fresh vegetables from Oakland and Antioch, Calif., to Stockton, Calif., and on that date rate from Antioch, which point is intermediate Oakland to Stockton, was cancelled leaving in effect class C rate lower than rate from Oakland. Contention that \$1.15 rate still applies from Antioch to Stockton, not sustained. *Martin Brokerage Co. v. S. P. Co.* 91 (92).

Fifth-class rate on cereal beverages, carbonated, nonalcoholic, from La Crosse, Wis., to Sioux Falls, S. Dak., not shown unreasonable but found unduly prejudicial to La Crosse as compared with commodity rates from Milwaukee, Wis., and St. Louis, Mo. Reparation denied. *Michel Brewing Co. v. C., M. & St. P. Ry. Co.* 103.

Class A rates on Sudan grass seed from points in Texas to Oklahoma City, Okla., Lawrence and Atchison, Kans., and Kansas City, Mo., found legally applicable and not shown unreasonable as compared with lower commodity rate on sorghum seed, but rates to Kansas City found unreasonable to extent they exceeded combination of rates based on Argentine, Kans. Reparation awarded. *Barteldes Seed Co. v. A., T. & S. F. Ry. Co.* 111.

Sixth-class rate legally applicable on spent iron mass (spent oxide) from Cambridge, Mass., to Elizabethport, N. J., found unreasonable to extent it exceeded commodity rate subsequently established. *Herrmann & Co. v. N. Y., N. H. & H. R. R. Co.* 118.

First-class rate on saws from San Francisco, Calif., to Chicago, Ill., found unreasonable to extent it exceeded lower commodity rate applicable in the opposite direction and subsequently established over route of movement. Reparation awarded. *Simonds Mfg. Co. v. A., T. & S. F. Ry. Co.* 131.

Following *Swift & Co.*, 45 I. C. C., 8, commodity rates on eggs from interior Iowa points to Chicago, Ill., found unreasonable to extent they exceeded third-class rates contemporaneously in effect. Reparation awarded. *Bowman & Co. v. C., R. I. & P. Ry. Co.* 177.

Class E rate on crushed stone from Louisville, Nebr., to Haynies, Iowa, found unreasonable to extent it exceeded lower commodity rate applicable to Dunbar, Nebr., when moving through Haynies. Reparation awarded. *Sunderland Bros. Co. v. C., B. & Q. R. R. Co.* 185.

CLASS AND COMMODITY RATES—Continued.

Fifth-class rate legally applicable on red oil from Syracuse, N. Y., to Lodi and Hawthorne, N. J., not shown unreasonable as compared with lower commodity rate in effect via another route and subsequently established via route of movement. *Syracuse Chamber of Commerce v. N. Y. C. R. R. Co.* 197.

Second-class rate on mustard seed oil from San Francisco, Calif., to Chicago, Ill., found unreasonable to extent it exceeded lower commodity rate subsequently established. Reparation awarded. *Friedman Mfg. Co. v. W. P. R. R. Co.* 225.

Fifth-class rate on sulphate of potash, from Marysvale, Utah, to New Orleans, La., for export, exceeded lower commodity rate subsequently established. Reparation awarded. *Armour & Co. v. D. & R. G. R. R. Co.* 233.

First-class rate on uncompressed cotton in bales from New Orleans, La., to Sweetwater, Tenn., exceeded lower commodity rate subsequently established. Reparation awarded. *Smith Cotton Products Co. v. L. & N. R. R. Co.* 311.

Third-class rates on steel lubricating or grease cups, l. c. l., from Battle Creek, Mich., and certain other points, to Stockton, Calif., found unreasonable to extent they exceeded lower commodity rates applicable on brass, bronze, and copper lubricating or grease cups. Reparation awarded. *Holt Mfg. Co. (Inc.) v. S. P. Co.* 397.

Fifth-class rate legally applicable on iron or steel forms or molds for concrete construction, from Canton and Martins Ferry, Ohio, to San Francisco, Calif., found unreasonable to extent it exceeded lower commodity rate subsequently established. Reparation awarded. *Concrete Engineering Co. v. P. Co.* 423.

Sixth-class rate on sulphuric acid, in tank-car loads, from Marcus Hook, Pa., to Hopewell, Va., found unreasonable to extent it exceeded lower commodity rate subsequently established. Reparation awarded. *Du Pont de Nemours Powder Co. v. P., B. & W. R. R. Co.* 477.

On earthenware urinals, l. c. l., from Perth Amboy, N. J., to Seattle, Wash., commodity rate canceled leaving in effect increased class rate, which is found not justified and unreasonable to extent it exceeded subsequently established l. c. l. commodity rate on earthenware and chinaware. Reparation awarded. *Fords Porcelain Works v. L. V. R. R. Co.* 485.

Fifth-class rate on wrought-iron annealing boxes from Allegheny, Pa., to Weirton, W. Va., found unreasonable and unduly prejudicial to extent it exceeded lower commodity rate on cast-iron annealing boxes. *Independent Bridge Co. v. P. R. R. Co.* 525.

Fifth-class rate on scrap copper, in bales, from Atlanta, Ga., to Perth Amboy, N. J., found unreasonable to extent it exceeded lower commodity rate when packed in barrels or boxes. Reparation awarded. *Stein & Co. v. A., B. & A. Ry. Co.* 533.

Commodity rate on scrap iron from South Bend, Ind., to Rensselaer, N. Y. increased to equal class rate approved in *The Fifteen Per Cent Case*, 45 I. C. C. 303, found justified. *Kaufman & Sons Co. v. N. Y. C. R. R. Co.* 551.

Local commodity rates on circular table tops and tops with rims attached, loose or in packages, from St. Louis, Mo., Peoria and Chicago, Ill., to Wichita, Kans., and when used as factors in making through rates from Portsmouth, Ohio, found unreasonable to extent they exceeded the class A rates applicable to furniture stock in the white. *Wichita Wholesale Furniture Co. v. A., T. & S. F. Ry. Co.* 586.

Commodity rates as a rule are lower than the class rates, but this fact does not establish the unreasonableness of the latter. *Helvetia Milk Condensing Co. v. A. & V. Ry. Co.* 625 (626).

CLASS AND COMMODITY RATES—Continued.

Joint commodity rates on sulphuric acid, in tank-car loads, from Savannah, Ga., to Emporium and Mount Union, Pa., increased higher than the class rates, found justified in that they compare favorably with rates from acid-producing points in C. F. A. and trunk line territories, and other points, to the same destinations. *Aetna Explosives Co. v. S. A. L. Ry. Co.*, 674.

Commodity rates are not necessarily unreasonable merely because higher than class rates which have been depressed by water competition. *Id.* (676).

CLASS RATES. See also CLASS AND COMMODITY RATES.

Contention that first and second class rates charged on l. c. l. shipments of Delaware punch sirup from San Antonio, Tex., to various destinations were unreasonable to extent they exceeded the fourth-class rate on flavoring and fruit sirups, not sustained. Reparation denied. *Delaware Punch Co. of Texas v. I. & G. N. Ry. Co.* 143.

First-class rate legally applicable on rubber glass from Ashland, Mass., to Miami, Ariz., exceeded third-class combination rates subsequently established. Reparation awarded. *American Bridge Co. v. N. Y., N. H. & H. R. R. Co.* 181.

Class A rates charged on shipment of emigrant movables, including live stock, from Waucoma, Iowa, to Midland, S. Dak., exceeded combination class B rate legally applicable. Legal rate found unreasonable to extent it exceeded joint class B rate subsequently established. *Carr v. C., M. & St. P. Ry. Co.* 205.

Double first-class rate on cake ornaments from New York, N. Y., to San Francisco, Calif., not shown unreasonable or unduly prejudicial, as compared with first-class rate applicable to notions, n. o. i. b. n., in barrels or boxes. *Getz & Co. v. A., T. & S. F. Ry. Co.* 454.

First-class rate on cotton mop heads, l. c. l., from Paducah, Ky., to Chicago, Ill., found unreasonable to extent it exceeded second-class rate on complete mops. Reparation awarded. *Paducah Board of Trade v. I. C. R. R. Co.* 462.

Fifth-class rates legally applicable on bagging from points in Oklahoma to points in Texas, found unreasonable to extent they exceeded rates found reasonable herein. *Houston Exporters Asso. v. A., T. & S. F. Ry. Co.* 509 (510).

CLASSIFICATION.

In General: Classification ratings necessarily are general and provide normal rates for the entire territories in which they apply. *Helvetia Milk Condensing Co. v. A. & V. Ry. Co.* 625 (626).

In General: No classification can be so minute as to conform to the differing varieties and conditions of traffic, and to separate different grades or densities of the same article into different classes with varying rates, would go far to defeat the real purpose of classification. *Memphis Freight Bureau v. C. & O. Ry. Co.* 731 (733).

Fibers, paper makers': Sixth-class rating on, comprising waste paper, rags, jute waste, flax-mill sweepings, old bagging (cut in pieces), rope-mill sweepings, and junk (old rope and cordage) in carloads from and to certain points in official classification territory not shown unreasonable. *International Purchasing Co. v. A., C. & Y. Ry. Co.* 163 (166).

Milk: Southern classification ratings of fifth-class c. l., and third class, l. c. l., on liquid condensed or evaporated milk, in metal cans, in barrels or boxes, not shown unreasonable as compared with ratings in official and other classification territories. *Helvetia Milk Condensing Co. v. A. & V. Ry. Co.* 624.

Milk: Condensed milk, in cans, is rated the same as canned fruits and vegetables in each classification. *Id.* (626).

Petrolatum, liquid: A medicinal mineral oil refined from petroleum, held to be within the western classification description of "patent or proprietary medicines" to which the second-class rating was applicable. *Standard Oil Co. (California) v. A., T. & S. F. Ry. Co.* 598.

CLASSIFICATION—Continued.

Sweepers, carpet: Official classification ratings of second-class on hand carpet sweepers and first-class on carpet and vacuum cleaners combined, l. c. l., in boxes, not shown unreasonable. *Bissell Carpet Sweeper Co. v. B. & O. R. R. Co.* 479.

Table tops: Circular table tops and tops with rims attached found to have been properly rated as furniture stock in the white. *Wichita Wholesale Furniture Co. v. A., T. & S. F. Ry. Co.* 586 (587).

Transfers, street-railway: First-class rating on, l. c. l., from Philadelphia, Pa., to Memphis, Tenn., found legally applicable and not shown unreasonable or unduly prejudicial as compared with ratings on register or sales checks or tickets, and on other printed matter. *Memphis Freight Bureau v. C. & O. Ry. Co.* 731.

CLEANING IN TRANSIT. *See* TRANSIT ARRANGEMENTS (CLEANING).

COMBINATION RATES.

Following *Dulweber Co.*, 45 I. C. C., 549, and as compared with rate on a similar shipment from Sparta, Ill., to La Fayette, Ind., combination rate on a contractor's outfit, loaded on two cars, from McComb, Miss., to Walnut Ridge, Ark., not shown unreasonable. *Moreno-Burkham Construction Co. v. I. C. R. R. Co.* 138.

Combination rate on cyanamid from Niagara Falls, Ont., to Hattiesburg, and Meridian, Miss., and Dothan and Montgomery, Ala., exceeded rates per net ton. Reparation awarded. *American Cyanamid Co. v. M. C. R. R. Co.* 236 (238).

Combination rates on condensed milk, in milk-shipping cans, from Webberville, Mich., and Washington, D. C., to Jacksonville, Fla., and from Jacksonville to Richmond, Va., found unreasonable to extent they exceeded fourth-class rate to Cincinnati and fifth-class rate beyond, subsequently established. Reparation awarded. *Chapin Sacks Mfg. Co. v. P. M. R. R. Co.* 443 (446).

Combination rate legally applicable on steel relay rails, from Mangham, La., to Ramsay, La., by way of Natchez, Miss., found unreasonable due to the factor from Mangham to Natchez. Reparation awarded. *Zelnicker Supply Co. v. St. L., I. M. & S. Ry. Co.* 677.

Joint and combination through rates made on specific bases applicable on various commodities from certain points in eastern, southern, and central states to certain destinations in Iowa found unreasonable, and where unprotected by fourth section applications, unlawful. Reparation awarded. *Heider Mfg. Co. v. C. G. W. R. R. Co.* 713.

COMMODITY RATES. *See also* CLASS AND COMMODITY RATES.

Commodity rates are seldom provided on any commodity in l. c. l. quantities. *Paducah Board of Trade v. I. C. R. R. Co.* 462 (464).

Rates on news print paper, to Wichita, Kans., from Chicago, Ill., and points taking same rates, and from points in Minnesota, found unreasonable as compared with rates to Kansas City. Reparation awarded. *Wichita Traffic Bureau v. A., T. & S. F. Ry. Co.* 505.

Rates charged on nitrate of potash from Montchannin, Del., to Dupont, Wash., found unreasonable to extent they exceeded maximum authorized in *Transcontinental Commodity Rates*, 48 I. C. C., 79. Reparation awarded. *Du Pont de Nemours Powder Co. v. P. & R. Ry. Co.* 621.

If special circumstances and conditions surround the movement of a commodity between particular points, which do not apply between other points, the conditions are met by the establishment of commodity rates. *Helvetia Milk Condensing Co. v. A. & V. Ry. Co.* 625 (626).

COMMON CARRIER.

Complainant listed in defendant's tariff as an industry instead of a connecting carrier, which error should be corrected. *Aurora, Elgin & Chicago R. R. Co. v. I. H. B. R. R. Co.* 331 (334).

Finding in 38 I. C. C., 510, that the Muncie & Western R. R. is a common carrier, adhered to. *Ball Bros. Glass Mfg. Co. v. C., C., C. & St. L. Ry. Co.* 418 (421).

The fact that the State Board of Harbor Commissioners of San Francisco Belt R. R., is directly owned and operated by the state and has no tariffs on file with the Commission neither qualifies nor modifies its status as a common carrier. Tariffs should be filed. *California Canneries Co. v. S. P. Co.* 500 (503).

COMMUTATION FARES.

Single-trip fare of 10 cents and commutation fares of \$1 for 14 rides between East Liverpool, Ohio, and Chester, W. Va., approved. *City of East Liverpool, Ohio, v. S., E. L. & B. V. T. Co.* 563 (569).

COMPARATIVE RATES. See also ANALOGOUS ARTICLES.

Acid, sulphuric: Sixth-class rate on, in tank-car loads, from Marcus Hook, Pa., to Hopewell, Va., found unreasonable to extent it exceeded lower commodity rate applicable to nitrating acids from and to the same points. Reparation awarded. *Du Pont de Nemours Powder Co. v. P., B. & W. R. R. Co.* 477.

Dairy products: In comparing the rates on dairy freight with the rates on fruits and vegetables, the Commission may not properly overlook the fact that dairy products are high-grade commodities, and that the freight rates are a relatively small item in the selling price. *National Poultry, Butter & Egg Asso. v. B. & O. S. W. R. R. Co.* 34 (48).

Grease cups: Third-class rates on steel lubricating or grease cups, l. c. l., from Battle Creek, Mich., to Stockton, Calif., exceeded lower commodity rates applicable on brass, bronze, and copper lubricating or grease cups. Reparation awarded. *Holt Mfg. Co. (Inc.) v. S. P. Co.* 397.

Gypsum rock: Commodity rate on, from Fort Dodge, Iowa, to Prospect Hill, Mo., not shown unreasonable as compared with rates on hollow building tile and wall plaster. *United States Gypsum Co. v. Ft. D., D. M. & S. R. R. Co.* 135

Lumber: Rates on cypress lumber and shingles, in straight or mixed carloads, or mixed with pine lumber and shingles, from Lake Charles, La., to points in Texas, exceeded rates applicable on pine lumber. Reparation awarded. *Independent Cooperative Lumber Co. v. L. W. R. R. Co.* 557.

Mop heads, cotton: Rate on, l. c. l., from Paducah, Ky., to Chicago, Ill., found unreasonable as compared with rates on cotton rope and mop yarn. *Paducah Board of Trade v. I. C. R. R. Co.* 462 (463).

Oil, mustard seed: Second-class rate on, from San Francisco, Calif., to Chicago, Ill., compared with rates applicable on various other oils. Reparation awarded. *Friedman Mfg. Co. v. W. P. R. R. Co.* 225 (226).

Ornaments, cake: Double first-class rate on, l. c. l., from New York, N. Y., to San Francisco, Calif., not shown unreasonable or unduly prejudicial, as compared with first-class rate applicable to notions, n. o. i. b. n., in barrels or boxes. *Getz & Co. v. A., T. & S. F. Ry. Co.* 454.

Potash, sulphate of: Rates on, from Marysvale, Utah, to New Orleans, La., compared with rates on crude earth paint between the same points, on arsenic from Salt Lake City, Utah, to New Orleans, and with rates on the same commodity between other points for similar distances. *Armour & Co. v. D. & R. G. R. R. Co.* 233 (234).

Potatoes: Rates on, from Rice, Minn., compared with rates on flour from Duluth. *Rice Potato Co. v. B. & O. R. R. Co.* 364 (366).

COMPARATIVE RATES—Continued.

Safes: Rate legally applicable on hollow-wall steel safes, with safe interiors, l. c. l., from Marietta, Ohio, to San Francisco, Calif., not shown unreasonable or unduly prejudicial as compared with rates on steel vault furniture and fittings, including iron safes. *Rucker-Fuller Desk Co. v. S. P. Co.* 561.

Sand: Rates on glass sand from Hancock, W. Va., to four points easterly of Pittsburgh, Pa., compared with rates on engine molding and building sand from and to the same and other points and with the rates on fluxing limestone from Martinsburg, W. Va., Thomasville, and Bellefonte, Pa., to same points. *American Window Glass Co. v. W. M. Ry. Co.* 704 (708).

Seed: Class A rates on Sudan grass seed from points in Texas to Oklahoma City, Okla., Lawrence and Atchison, Kansas, and Kansas City, Mo., found legally applicable and not shown unreasonable as compared with lower commodity rate on sorghum seed, but rates to Kansas City found unreasonable to extent they exceeded combination of rates based on Argentine, Kansas. Reparation awarded. *Barteldes Seed Co. v. A., T. & S. F. Ry. Co.* 111.

Shavings, cottonseed hull: Rates on, from Birmingham, Ala., to Hopewell, Va., not shown unreasonable as compared with rates on other commodities from other points which take rates to Hopewell the same as to the Virginia cities. *Farmers & Ginners Cotton Oil Co. v. A. G. S. R. R. Co.* 593 (594).

Shooks, box: Rate legally applicable on pine box shooks, from Spokane, Wash., to Pitman, Kans., not shown unduly prejudicial but found unreasonable as compared with rates on sash and doors to Pitman, and on shooks, sash and doors to other Kansas points. Reparation awarded. *Western Pine Mfg. Co. v. M. V. R. R. Co.* 581.

Steel: Rate on plain sheet steel from Indiana Harbor, Ind., to Phoenix, Ariz., found legally applicable but unreasonable to extent it exceeded rate on punched sheet steel. Reparation awarded. *Inland Steel Co. v. I. H. B. R. R. Co.* 97.

Sirups: Contention that first and second class rates charged on l. c. l. shipments of Delaware punch sirup from San Antonio, Tex., to various destinations were unreasonable to extent they exceeded the fourth-class rate on flavoring and fruit sirups, not sustained. Reparation denied. *Delaware Punch Co. of Texas v. I. & G. N. Ry. Co.* 143.

Table tops: Local rates on circular table tops and tops with rims attached, loose or in packages, from St. Louis, Mo., Peoria and Chicago, Ill., and points taking same rates, to Wichita, Kans., and when used as factors in making through rates from Portsmouth, Ohio, found unreasonable to extent they exceeded rates applicable to furniture stock in the white. *Wichita Wholesale Furniture Co. v. A., T. & S. F. Ry. Co.* 586.

Toluol: Rates on, in tank-car loads, from Milwaukee, Wis., and certain other eastern points to Hercules, Calif., compared with rates on concentrated lye, creosote oil, and glycerine, and on acids in the opposite direction. *Hercules Powder Co. v. C. G. W. R. R. Co.* 229 (231).

Transfers, street railway: First-class rating on, l. c. l., from Philadelphia, Pa., to Memphis, Tenn., found legally applicable and not shown unreasonable as compared with ratings on register or sales checks or tickets, and on other printed matter. *Memphis Freight Bureau v. O. & O. Ry. Co.* 731.

Wire rods: Commodity rate legally applicable on, in coils, from Atlanta, Ga., to Baltimore, Md., exceeded the rate on steel billets, which lower rate was subsequently made applicable to wire rods. Reparation awarded. *American Steel Export Co. v. S. Ry. Co.* 527.

COMPETING LINES.

The law does not impose upon a carrier the duty in all cases to give to points on a connecting independent railroad the same rates to markets that it gives to points on its own branch lines in the same region. *McGowan-Forshee Lumber Co. v. F., A. & G. R. R. Co.* 317 (322).

COMPETITION.

In General: Lines under a uniform and coordinated national control by order of the Director General are not competitive. *Pacific Lumber Co. v. N. W. P. R. R. Co.* 738 (770).

Articles: Forms or molds: Metal forms for concrete construction compete on the Pacific coast with wooden forms made locally, but not with metal concrete reinforcement. *Concrete Engineering Co. v. P. Co.* 423 (424).

Market: On alcohol, in tank-car loads, from Henderson, Ky., to Mount Union and Emporium, Pa., cars were loaded to capacity. Charges assessed based on 50,000 pounds minimum, established to place Henderson on a competitive basis with other alcohol-producing points, not shown unreasonable. *Kentucky Peerless Distilling Co. v. L., H. & St. L. Ry. Co.* 209.

Potential: Necessity to maintain a low rate because of potential water competition not shown. *Chamber of Commerce, Houston, Tex. v. M. L. & T. R. R. & S. S. Co.* 653 (657).

Water: By means of its parallel lines and of the paralleling all-rail routes in which it participates, Grand Trunk Ry. Co. of Canada may compete for traffic with its Detroit River ferryboats. *Control of Water Carriers by Railroad Carriers*, 436 (437).

Water: Commodity rates are not necessarily unreasonable merely because higher than class rates which have been depressed by water competition. *Aetna Explosives Co. v. S. A. L. Ry. Co.* 674 (676).

COMPETITIVE TRAFFIC.

There is no basis for any distinction between competitive and noncompetitive traffic while roads under federal control. *California Canneries Co. v. S. P. Co.* 501 (503).

CONFERENCE RULINGS. See ADMINISTRATIVE RULINGS.**CONGRESS.**

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COMPARATIVE RATES—Continued.

Safes: Rate legally applicable on hollow-wall steel safes, with safe interiors, l. c. l., from Marietta, Ohio, to San Francisco, Calif., not shown unreasonable or unduly prejudicial as compared with rates on steel vault furniture and fittings, including iron safes. *Rucker-Fuller Desk Co. v. S. P. Co.* 561.

Sand: Rates on glass sand from Hancock, W. Va., to four points easterly of Pittsburgh, Pa., compared with rates on engine molding and building sand from and to the same and other points and with the rates on fluxing limestone from Martinsburg, W. Va., Thomasville, and Bellefonte, Pa., to same points. *American Window Glass Co. v. W. M. Ry. Co.* 704 (708).

Seed: Class A rates on Sudan grass seed from points in Texas to Oklahoma City, Okla., Lawrence and Atchison, Kansas, and Kansas City, Mo., found legally applicable and not shown unreasonable as compared with lower commodity rate on sorghum seed, but rates to Kansas City found unreasonable to extent they exceeded combination of rates based on Argentine, Kansas. Reparation awarded. *Barteldes Seed Co. v. A., T. & S. F. Ry. Co.* 111.

Shavings, cottonseed hull: Rates on, from Birmingham, Ala., to Hopewell, Va., not shown unreasonable as compared with rates on other commodities from other points which take rates to Hopewell the same as to the Virginia cities. *Farmers & Ginners Cotton Oil Co. v. A. G. S. R. R. Co.* 593 (594).

Shooks, box: Rate legally applicable on pine box shooks, from Spokane, Wash., to Pitman, Kans., not shown unduly prejudicial but found unreasonable as compared with rates on sash and doors to Pitman, and on shooks, sash and doors to other Kansas points. Reparation awarded. *Western Pine Mfg. Co. v. M. V. R. R. Co.* 581.

Steel: Rate on plain sheet steel from Indiana Harbor, Ind., to Phoenix, Ariz., found legally applicable but unreasonable to extent it exceeded rate on punched sheet steel. Reparation awarded. *Inland Steel Co. v. I. H. B. R. R. Co.* 97.

Sirups: Contention that first and second class rates charged on l. c. l. shipments of Delaware punch sirup from San Antonio, Tex., to various destinations were unreasonable to extent they exceeded the fourth-class rate on flavoring and fruit sirups, not sustained. Reparation denied. *Delaware Punch Co. of Texas v. I. & G. N. Ry. Co.* 143.

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Transfers, street railway: First-class rating on, l. c. l., from Philadelphia, Pa., to Memphis, Tenn., found legally applicable and not shown unreasonable as compared with ratings on register or sales checks or tickets, and on other printed matter. *Memphis Freight Bureau v. O. & O. Ry. Co.* 731.

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The law does not impose upon a carrier the duty in all cases to give to points on a connecting independent railroad the same rates to markets that it gives to points on its own branch lines in the same region. *McGowan-Forshee Lumber Co. v. F., A. & G. R. R. Co.* 317 (322).

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CONTAINERS—Continued.

Adequacy of a container should be determined with regard to the character and weight of the commodity to be shipped in it, and not with regard to the maximum load of the heaviest commodity which might be loaded in it, nor by a consideration of the heaviest load of other freight which might be stowed on top of it in shipment. *Id.* (694).

Commission agrees with suggestion that the classifications of defendants are deficient in not requiring wooden and metal boxes to meet adequate specifications before they are accepted as containers. *Id.* (695).

On the theory that it is the duty of carriers to protect freight, and that a shipper who uses complainant's steel container performs that service for the carrier, complainant contends that its container is an instrumentality of transportation for the use of which shippers are entitled to an allowance under section 15, *Held:* No basis for such an allowance. *Id.* (695-696).

Rates on steel containers, returned collapsed, not shown unreasonable. *Id.* (696).

Rates and rules applicable on shipments in steel containers, as compared with the rates and rules applicable on shipments of the same commodities packed in or protected by other appliances, not shown unreasonable or discriminatory. *Id.* (696).

CONTRACT.

Commission can not enforce the provisions of a contract entered into by complainant for the furnishing of cars for logging traffic equipped with bunk and chain arrangements, nor can the courts if to do so will result in discrimination in favor of the complainant prohibited by the act. *Diamond Lumber Co. v. C., M. & St. P. Ry. Co.* 78 (88).

Carrier and city, in consideration of grant of certain privileges by city to carrier, contracted for maintenance of a definite rate on freight moving interstate. Carrier afterwards established a higher rate in manner provided by the act. *Held:* Commission not authorized, in testing the reasonableness of the increased rate, to apply considerations other than those which would be generally applicable in any other case. *Cape Girardeau Commercial Club v. I. C. R. R. Co.* 105 (106, 107).

The Commission has no power to enforce agreements contained in city ordinances, between carrier and city. *Id.* (107).

Under contract specifying termination by either party on 60 days' notice, express companies supplied baggage cars, which complainants equipped for transporting live fish. Express companies requested to return cars whereupon agreement terminated. Prayer that defendants cease and desist from taking cars and to continue to furnish, *Held:* Issue not within Commission's jurisdiction. *Lay v. Amer. Exp. Co.* 373.

COST OF PROPERTY.

Accounting rules of the Commission provide that interest and taxes during construction, expenses incident to organization, including fees paid to promoters, and other general expenditures may be included in the cost of property. *City of East Liverpool, Ohio, v. S., E. L. & B. V. T. Co.* 563 (567).

CUBICAL CAPACITY. See MINIMUM WEIGHT.**CUMMINS AMENDMENT.**

Rules in western classification under which the rates on emigrant movables, including live stock, are made dependent upon or varying with the value of ordinary live stock, declared in writing by the shipper, subsequent to the Cummins amendment, found to be unlawful. *Carr v. C., M. & St. P. Ry. Co.* 205 (208).

DAMAGES. *See also* **REFUND.**

Shippers and carriers alike are charged with knowledge of tariff provisions, and the Commission is without authority to award reparation or authorize waiver of undercharges solely upon a showing that erroneous advice as to loading was given by defendant's agent. *United Shoe Machinery Co. v. B. & M. R. R.* 28 (30).

The Commission has refused to award reparation by reason of a misquotation of a rate or tariff provision by a carrier's agent. *Id.* (30).

Fact that complainants did not ultimately bear transportation charges, but passed them on to consignees in the form of increased prices, would not preclude an award of reparation to the claimants. *National Poultry, Butter & Egg Asso. v. B. & O. S. W. R. R. Co.* 34 (49).

The mere willingness of defendant to make refund is insufficient to justify an award of reparation. *Felder v. S. Ry. Co.* 124 (125).

Reparation denied on shipments of anthracite coal, from Shenandoah, Pa., to Perth Amboy, N. J., for transshipment, following *Delaware, Lackawanna & Western Coal Co.*, 46 I. C. C., 506; *Locust Mountain Coal Co. v. L. V. R. R. Co.* 137.

Where a reasonable rate is prescribed for a transportation service reparation will not be awarded to the basis of that rate on shipments which have been diverted or reconsigned, but there will be taken into consideration a reasonable maximum charge for the additional service performed. *Advance Lumber Co. v. S. A. L. Ry. Co.* 149 (150).

Misquotation of a rate by carrier's agent affords no basis for an award of reparation. *Fechheimer Steel & Iron Co. v. P. R. R. Co.* 183.

A carrier is entitled to a reasonable time in which to furnish special equipment, and unless given reasonable notice of shipper's requirements it is not liable for damages resulting from failure to furnish such equipment. *Northwestern Trading Co. (Inc.) v. Adams Exp. Co.* 211 (213).

Complainant, neither consignor nor consignee, but acting as selling agent for consignor, guaranteed to consignee rate of \$1.10. Consignee paid charges and deducted from complainant's invoice difference between amount paid and those that would have accrued at \$1.10 rate. *Held:* Complainant who ultimately bore the difference, party damaged. *Midland Coal Co. v. St. L. & S. F. R. R. Co.* 313 (314, 315).

While the Commission has frequently held that reparation would be awarded only to parties to the transportation record, it has in some instances recognized the propriety of making exceptions to this rule, where the complainant, though not a party to the transportation record, is the real party in interest and occupies the position of an undisclosed principal. *Id.* (314).

Complainant not found to have been damaged by the maintenance of a lower rate from Elkhorn and Beaver Valley branch of the Big Sandy division of the C. & O. Ry. to Newport News, Va., on coal for transshipment by water to points outside the Virginia capes than was maintained from Harold and Pikesville, Ky. *Darby Coal Sales Co. v. C. & O. Ry. Co.* 370.

Without passing upon the Commission's jurisdiction to award damages for failure to furnish cars upon reasonable request, as required by section 1, it may be said that under the circumstances of record it could not with propriety be found that defendant should respond in damages for its inability to furnish a full car supply. *Oden-Elliott Lumber Co. v. A. C. Ry.* 403 (411).

Claim for damages in amounts that lumber deteriorated in value due to alleged failure of defendant to furnish cars, denied. *Id.* (409).

DAMAGES—Continued.

Reparation claimed for damages resulting from loss of profits where shipper holding certain timber deeds was obliged to dispose thereof, due to alleged failure of carrier to furnish cars for transportation, denied. *Id.* (409).

Complainant who was neither consignor nor consignee, sold shipment to consignor under contract to deliver to its vendee. *Held*: Complainant real party in interest and entitled to reparation. *Advance Bag Co. v. C., C., C. & St. L. Ry. Co.* 467 (468).

Shipments of ties from Pocahontas, Black Rock, and Elnora, Ark., consigned to Air Line Junction, Ohio, and Michigan City, Ind., were sold f. o. b. Thebes and Cairo, Ill. Complaint filed against rates only to Thebes and Cairo. Defendants contend that following the *Stevens Grocer Case*, 42 I. C. C., 396, that the Commission can not award reparation, as the through rate from origin to ultimate destination was not assailed. *Held*: Contract was fulfilled upon delivery to designated carriers at those points. Reparation awarded. *Johnson & Son v. St. L.-S. F. Ry. Co.*, 518 (520).

A warehouse owner is not entitled to recover damages for depreciation in the rental value of his property as a result of leases by a railroad company of similar properties at nominal rentals to shippers. *Pittwood v. N. P. Ry. Co.*, 535.

The Commission has power to award damages only when they are suffered in consequence of a violation of the act to regulate commerce. *Id.* (535).

Reparation awarded against initial carrier and Director General due to misrouting shipment of high explosives from Emporium, Pa., to Thomasville, Pa. Shipment moved via interstate route. Lower rate applied via intrastate route. *Aetna Explosives Co. v. P. R. R. Co.*, 615 (616).

Upon petition for reconsideration of the finding in former report, 30 I. C. C., 597, that reparation should be denied, *Held*: Complainants and interveners are entitled to a finding as to the reasonableness of the rates during the two years immediately preceding the filing of the complaint. Thirty days allowed to present additional evidence. *Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co.* 635 (644).

The Supreme Court has held that the act of prescribing a rate for the future is legislative, while the act of awarding a sum of money in reparation of damages, sustained because of a violation of the law is judicial in its nature. *Id.* (638)

While Congress, without investigation or hearing, could prescribe either the absolute or maximum rate to be charged for the future, it could not perform the judicial function of entering a judgment in reparation of damages either with or without a hearing; nor could it confer upon this Commission power to make an order awarding damages otherwise than pursuant to its findings and conclusions upon investigation and full hearing. *Id.* (638).

Whatever may be the limitations upon the exercise of sound discretion or a reasonable flexibility of judgment in prescribing maximum rates for the future, the Commission holds, as has frequently been held, that "the Commission is not justified in awarding damages except on a basis as certain and definite in law and in fact as is essential to the support of a final judgment or decree requiring the payment of a definite sum of money by one party to another." *Id.* (638-639).

While fixing of maximum rates for the future must be at a definite, precise figure, the reasonableness of the exact figure decided upon is not susceptible of absolute demonstration. It is the concrete expression of the Commission's best judgment, exercised upon the record. The definite standard of reasonableness of the past rate as a basis for reparation is not susceptible of ascertainment in any other way. *Id.* (639).

DAMAGES—Continued.

In fixing the rate for the future the Commission must look to the purposes of the law in preventing the wrongs against which it is aimed, and upon the ascertained facts must apply its judgment as to what will be the reasonable rate and make such order as will best carry out those purposes. In doing this it is not essential that it shall be found that actual and definite damages has resulted to persons in the past. *Id.* (639).

Before the Commission is authorized to award reparation for past transactions it is necessary to find and fix what would have been a reasonable rate at the time of the transactions, which are the objects of the claim for reparation; and not only to find that the rate was unlawful, but if it be the amount of the rate involved, that such rate was unreasonable and resulted in actual damage to the complainant; also to ascertain the amount of such damage. *Id.* (639).

The Commission has not assumed to shorten the period of the statute of limitations by holding that it will never award reparation for any part of the statutory period prior to the date of filing the complaint, nor attempted to lay down any rule that, on account of alleged laches of a complaint in not protesting against the rates from time to time before the complaint was filed, reparation will not be awarded for ascertained damages merely because protest was not made. *Id.* (639-640).

In many cases the facts, circumstances, and conditions appearing upon investigation and hearing so thoroughly convincing of the unreasonableness of the rates prevailing prior to the filing of the complaint, that the judgment and conscience of the Commission rest entirely satisfied that reparation should be made. *Id.* (640).

Illustrations of various situations in which the Commission has awarded reparation in some cases and not in others, and in awarding it for the full period of the statute of limitations in some cases and for different periods in others. *Id.* (640).

Where the question of what is the reasonable rate for the future, or what would have been a reasonable rate for the past, is a close one on the record, the Commission may in many cases be reasonably well satisfied as to what should be done for the future, while hesitating to apply to past transactions as a basis for reparation the rate fixed for the future. *Id.* (641).

Carriers urge where a rate in effect for a long period is condemned and a lower one substituted for the future, reparation should not be awarded where it can be shown that although the parties paid and bore the charges, as such, the rate then in effect was taken into account in fixing price of the goods, *Held:* This contention rejected in other cases, and matter dealt with only as between parties to the transportation. *Id.* (641).

Many circumstances must be considered in determining whether or not reparation should be awarded, and if so, in what amount. *Id.* (643).

The Commission is precluded from awarding reparation on shipments moving more than two years before a complaint for the recovery of damages is filed, But not required to award reparation on all shipments covered by the complaint which moved within the two-year period. *Id.* (643).

Difference in proof required to sustain an award of reparation under a finding of undue preference or prejudice and a finding that a rate is unreasonable *per se*. *Id.* (645).

Complainants not found entitled to reparation upon basis of rates found reasonable in reports in *City of Spokane Cases*, 15 I. O. C., 376, 19 I. O. C., 162, and 21 I. O. C., 400, by reason of the fact that during period in question lower rates were maintained to north Pacific coast points than to Spokane. *Adams Leather Co. v. O. P. Ry. Co.* 659 (666).

DAMAGES—Continued.

Reparation denied on shipments of steel plates and rivets from eastern defined territories to Spokane, Wash., following *Adams Leather Co. Case*, p. 659 *ante*. *City of Spokane v. G. N. Ry.*, 667.

Reparation is due to the person who has been required to pay the excessive charge as the price of transportation. *Heider Mfg. Co. v. C. G. W. R. R. Co.* 713 (718).

DAYLIGHT SAVING.

Limits of eastern, central, mountain, and Pacific standard time zones defined, as required by Act of Congress entitled "An act to save daylight and to provide standard time for the United States," approved March 19, 1918. *Standard Time Zone Investigation*, 273.

DECLARED VALUE. See CUMMINS AMENDMENT.

DEFICIT.

Operating deficit of the Denver & Salt Lake R. R. for six months ended July 31, 1917, and for the three months ended March 31, 1918, shown. *D. & S. L. R. R. Co. v. C., B. & Q. R. R. Co.*, 679 (682).

DELIVERY.

In original report 42 I. C. C., 470, rates on gum and oak lumber from Charleston, Miss., to Chicago, Ill., for P., C., C. & St. L. Ry. delivery, found illegal and reparation due. Defendants refused to verify reparation statement covering shipments not actually delivered by the Panhandle. Upon rehearing certain shipments found misrouted and on shipments unrouted, shipper entitled to lowest rates available. Reparation awarded. *Lamb-Fish Lumber Co. v. Y. & M. V. R. R. Co.* 6.

Contention that defendants were justified in not delivering to the P., C., C. & St. L. Ry. shipments destined to points in Chicago not reached by that road, and that higher rates by way of other lines took precedence over lower rates by way of the Panhandle, which lower rates could apply to points on other lines only in connection with switching and absorption tariffs, not sustained. *Id.* (7).

Proposed discontinuance of the facilities of the Keystone Elevator & Warehouse Co. at North Philadelphia, Pa., as a delivery point for hay and straw, found justified. *Philadelphia Hay and Straw Deliveries*, 324.

DEMURRAGE.

On gum lumber from Helena, Ark., to Buffalo, N. Y., reconsignment to Medina, N. Y., refused because of alleged embargoes. Shipment held at Buffalo and subsequently moved under new bill of lading to Medina. *Held*: As no embargoes existed against Buffalo or Medina, transportation and demurrage charges were illegal. Reparation awarded. *Nichols & Cox Lumber Co. v. N. Y. C. R. R. Co.* 174.

Average agreement provided for termination "if payment unnecessarily delayed or declined." By reason of a flood at Dayton embargo was placed. When embargo lifted, cars were bunched and could not be unloaded within free time. Demurrage accrued and payment refused, whereupon agreement was terminated. *Held*: As rules made no provision for detention on account of bunching resulting from an act of God, charges lawfully accrued and carrier justified in terminating agreement. *Davis Sewing Machine Co. v. P., C., C. & St. L. R. R. Co.* 191.

Carload of machinery from Springfield, Ohio, consigned to forwarding company. Sixtieth Street, New York, but on account embargo reconsigned to Thirty-third Street station. Portions of shipment removed and remainder placed in storage and not removed until several months later. Demurrage and track storage charges not shown unreasonable. *Barber & Co. v. C., C., C. & St. L. Ry. Co.* 194.

DEMURRAGE—Continued.

Demurrage and storage charges are not assessed primarily for revenue purposes, but in part, at least, as a penalty to promote release and fullest use of equipment, tracks, and terminal houses, and the measure of such charges may not fairly be determined by the charges made by public warehouses. *Id.* (196).

Lumber billed from points in Louisiana to Herrick, Ill., held at Ramsey, Ill., where they were ordered reconsigned to Toronto, Canada. Because of embargo reconsignment refused and demurrage accrued. Inasmuch as tariffs made no provision for such charges, *Held*: Demurrage unreasonable and illegal. Reparation awarded. *Higgins Lumber & Export Co. v. N. O. G. N. R. R. Co.* 214.

Demurrage does not accrue, under a general demurrage tariff, against a car which has been offered for reconsignment to an embargoed point upon the general principle that demurrage is assessable for detention for which the shipper is directly responsible and can avoid or abate, while an embargo is placed by reason of the carriers' disability, *Id.* (215).

On certain cars placed for loading at Belt station 280, Walker County, Ga., owing to the frozen condition of the pits, it was impossible to excavate the clay. Cars were held pending moderation of weather and subsequently released and switched back empty to Chattanooga, Tenn. Demurrage and switching charges assessed not shown unreasonable. *Chattanooga Sewer Pipe & Fire Brick Co. v. B. Ry. Co. of C.* 447.

The mere fact that in exceptional instances demurrage charges on cars held for loading but not used are greater than charges which would accrue for detention and transportation if loaded and switched to a destination a short distance beyond the loading point does not prove that the rule or charges thereunder are unreasonable. *Id.* (448).

On lumber arriving at Belvidere, N. J., from West Sheffield, Pa., on May 8, 1916, consignee failed to accept shipment. Complainant on June 27 ordered car forwarded to Netcong, N. J., but shipment not forwarded until July 1, on which date bill of lading was surrendered. *Held*: Demurrage charges assessed not shown unreasonable. *Central Pennsylvania Lumber Co. v. T. V. Ry. Co.* 465.

Carload of baled shavings arrived South Bend, Ind., from Odanah, Wis., July 6, 1916. Consignee not having an office in South Bend failed to receive notice of arrival mailed July 7. Disposition orders received and shipment delivered on August 9 to new consignee, who did not release car until August 15. *Held*: Demurrage assessed not shown unreasonable. *Schroeder Lumber Co. v. N. Y. C. R. R. Co.* 473.

On cement at Slater, Mo., notice of arrival mailed Aug. 19, 1914, and received 4 p. m. Aug. 20. Car was partly unloaded Aug. 21. Further unloading denied on Aug. 22, due to refusal to pay demurrage. Shipment later offered for unloading free of demurrage, without acceptance, and ultimately sold. *Held*: No damages resulted prior to date upon which delivery was tendered free of demurrage, and any arising thereafter not attributable to a violation of the act. *Dulaney Brothers v. C. & A. R. R. Co.* 579.

On grain to Pittsburgh, Pa., inspected or assembled at Manchester yard and forwarded to elevators for transit services, some shipments being weighed only, complainant complied with all necessary transit requirements for forwarding at through rates from points of origin. *Held*: Demurrage charges assessed at Pittsburgh found illegal. Reparation awarded. *Grain & Hay Exchange of Pittsburgh v. P. Co.* 723.

DENSITY OF TRAFFIC. *See VOLUME OF TRAFFIC.*

DEPRECIATION.

Allowance for depreciation of property properly made in determining whether fare is sufficient to yield a reasonable return on the value of the property. *City of East Liverpool, Ohio, v. S., E. L. & B. V. T. Co.* 563 (568).

DETENTION. *See* DEMURRAGE.

DETERIORATION.

Claim for damages in amounts that lumber deteriorated in value due to alleged failure of defendant to furnish cars, denied. *Oden-Elliott Lumber Co. v. A. C. Ry.* 403 (409).

DEVICE.

Shipment of dies and shafting from Chrome, N. J., billed to Galveston, Tex., rebilled to Silverton, Colo., as a device to obtain a combination rate which was thought to have been lower than the through rate. *Held:* Through shipment and rates legally applicable not shown unreasonable or unduly prejudicial. *Chrome Steel Works v. N. Y. & N. J. S. Co.* 727.

DIFFERENTIAL.

Rates on potatoes from Rice, Minn., to points in c. f. s. territory found unduly prejudicial to extent they exceeded rates maintained from points in the so-called Princeton group by more than 2 cents. *Rice Potato Co. v. B. & O. R. R. Co.* 364 (368).

Rates on logs, lumber, and various lumber commodities from producing points in Louisiana, Arkansas, Texas, and Oklahoma to Metropolis, Ill., found unreasonable and unduly prejudicial to extent they exceeded rates to Cairo by more than 1 cent. Reparation awarded. *Metropolis Commercial Club v. I. C. R. R. Co.* 376 (384).

DIRECTOR GENERAL. *See also* FEDERAL CONTROL ACT.

Procedure followed in determining whether or not the Director General was a necessary party. *Willamette Valley Lumbermen's Asso. v. S. P. Co.* 250 (255). It is inconceivable that the Congress did a vain thing in conferring upon this Commission power to determine whether or not the rates initiated by the Director General are just and reasonable. *Id.* (261).

Certain data and recommendations regarding a proposed increase in express rates reported upon at the request of. *In re Increases in Express Rates*, 263.

Rates attacked increased since filing of complaint by order of the Director General, and such rates subject to review by the Commission only when Director General is made an additional party defendant, and this not having been done, complaint dismissed. *Jones & Dunn v. St. L., I. M. & S. Ry. Co.* 339 (344); *Lumbermen's Asso. of Chicago v. A. A. R. R. Co.* 431 (435).

As Director General not made party defendant no finding with respect to rates which he initiated made. Commission, however, suggests that present rates be revised. *Independent Cooperative Lumber Co. v. L. W. R. R. Co.* 557 (560).

No evidence as to justness and reasonableness of rates initiated by the Director General, and the question of the burden of proof in respect of such rates not having been raised or argued, that question reserved for determination in a proceeding where it shall have been fully presented. *Reliance Mfg. Co. v. I. C. R. R. Co.* 607 (611).

Reparation awarded against initial carrier and Director General due to misrouting shipment of high explosives from Emporium, Pa., to Thomasville, Pa. Shipment moved via interstate route. Lower rate applied via intrastate route. *Aetna Explosives Co. v. P. R. R. Co.* 615 (616).

Director General not made a party to proceeding and present rates can not be considered on this record. *Chamber of Commerce, Houston, Tex. v. M. L. & T. R. R. & S. S. Co.* 653 (656).

DISCRETION.

The domain for the legal exercise of a sound discretion and reasonable flexibility of judgment has not been closed against the Commission so that it is forbidden to shape its action in such manner as will, in view of all circumstances of the case, best promote the ends of justice, taking into account the public as well as the private interests involved. *Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co.* 635 (643).

DISCRIMINATION. *See also* PREFERENCES AND PREJUDICES.

Power of Congress and of the Commission to prevent interstate carriers from practicing discrimination against a particular locality, is not confined to those whose rails enter it. *Metropolis Commercial Club v. I. C. R. R. Co.* 376 (382).

A warehouse owner, a landlord seeking to rent his property, as such, has no relation with a common carrier which could result in a discrimination against him in violation of the act to regulate commerce. *Pittwood v. N. P. Ry. Co.* 535.

A state of facts which would show an undue or unreasonable prejudice or disadvantage under section 3 of the act, might also constitute an unjust discrimination and therefore be a violation of section 2 of the act. *Pacific Lumber Co. v. N. W. P. R. R. Co.* 738 (760).

DISTANCE RATES.

Rates on salt from Hutchinson, Kans., to certain points in Nebraska, not shown unreasonable or otherwise in violation of the act, inasmuch as in the absence of specific through rates, commodity distance rates, which were equal to or higher than rates assessed, would have taken precedence over the lower class rates in effect. *Sunderland Bros. Co. v. C., B. & Q. R. R. Co.* 21.

Rates on glass bottles and fruit jars, from Oklahoma to Waco, Tex., found unreasonable to extent they exceeded those that would have resulted from the application of the modified basis prescribed in the *Shreveport Case*, 48 I. C. C. 353, to the then existing grouping. *Waco Chamber of Commerce v. A., T. & S. F. Ry. Co.* 668.

DISTRIBUTING POINTS.

Disadvantage against a distributing point can not be predicated merely upon the fact that the combination of inbound and outbound rates through that point exceeds the combination available through a competitive distributing point. *Johnston v. A., T. & S. F. Ry. Co.* 356 (359).

DISTURBANCE OF ADJUSTMENT.

The fact that other points would seek reductions in their present rates if the rates asked to Metropolis are prescribed, affords no basis for denying relief to Metropolis if the present rates to that point are unlawful. *Metropolis Commercial Club v. I. C. R. R. Co.* 376 (383).

DIVERSION. *See also* RECONSIGNMENT.

On pine lumber from Coal City, Ala., to Cairo, Ill., diverted to Carpenter, Ill., and subsequently to Toledo, Ohio, following *Kern & Sons*, 40 I. C. C., 552, and *Reconsignment Case*, 47 I. C. C., 590, reasonable maximum charge prescribed for each diversion. *Advance Lumber Co. v. S. A. L. Ry. Co.* 149 (150).

Where a reasonable rate is prescribed for a transportation service, reparation will not be awarded to the basis of that rate on shipments which have been diverted or reconsigned, but there will be taken into consideration a reasonable maximum charge for the additional service performed. *Id.* (150).

Following *American Window Glass Co.*, 48 I. C. C., 451, charges on rough lumber from Prentiss, N. C., to New York, N. Y., diverted to Potomac Yard, Va. to Bayonne, N. J., should not have exceeded through rate plus \$5 for diversion. *Stevens-Eaton Co. v. T. F. Ry. Co.* 471.

Following *Kern & Sons*, 40 I. C. C., 552, and *Reconsignment Case*, 47 I. C. C., 590, charges on lumber from Jemison, Ala., to Detroit, Mich., diverted to Trenton, Nova Scotia, found unreasonable, inasmuch as they exceeded charges based on joint through rate from Jemison to Trenton, plus \$2 for diversion service. Reparation awarded. *Germain Co. v. L. & N. R. R. Co.* 605.

DIVISIONS.

The division received out of joint rates to farther distant points is not the proper measure of the rate to an intermediate point. *Martin Brokerage Co. v. S. P. Co.* 91 (93).

Shippers may not be deprived of just through rates merely because carriers can not agree upon a division of joint rates. *Willamette Valley Lumbermen's Asso. v. S. P. Co.* 250 (261).

Reasonable divisions to the Florida, Alabama & Gulf R. R. Co., out of joint rates prescribed on yellow pine lumber from Falco, Ala., to destinations on and north of the Ohio River, and to points on the L. & N. R. R. in Tennessee and Kentucky, found to be 3 cents per 100 pounds. *McGowan-Foshee Lumber Co. v. F., A. & G. R. R. Co.* 317 (321).

Divisions can not be predicated solely on the amount necessary to insure successful operation. *Id.* (319).

In fixing divisions of rates, the Commission can not go back of the effective date of order prescribing the rates the divisions of which are before it for determination. *Id.* (322).

Increase in rates on soft coal from mines on the Denver & Salt Lake R. R. to points in Kansas, Nebraska, Missouri, Iowa, and South Dakota on the lines of connecting carriers participating in the joint rates, made to meet a defined and acute emergency, should inure to the benefit of the Denver & Salt Lake. *D. & S. L. R. R. Co. v. C., B. & Q. R. R. Co.* 679.

No attack made against local rates or divisions received, and the question whether they are reasonable or unreasonable is not in issue. *Pacific Lumber Co. v. N. W. P. R. R. Co.*, 738 (758).

DOUBLE DECK CARS.

Rate on stock sheep, in double-deck cars, from Miles City, Mont., to Dempster, S. D., found unreasonable. Rate on fat sheep should not have exceeded the rate in effect on beef cattle, c. l., and on stock sheep, 75 per cent of the rate on fat sheep or beef cattle. Reparation awarded. *Albrecht v. N. P. Ry. Co.* 601 (604).

DUNNAGE. *See* CAR FITTING.

DUTY OF CARRIER.

A determination that it is the duty of the line-haul carrier to perform a particular switching and spotting service, for the performance of which by the industry an allowance should be paid, presupposes that the nature of the industry is such as to permit the performance of that service by the carrier. *National Malleable Castings Co. v. P. & L. E. R. R. Co.* 537 (542).

DUTY OF COMMISSION.

Congress in the exercise of its plenary power has charged the Commission with the duty and conferred upon it the authority, circumscribed by the limitations of the statutes enacted by it, to administratively give effect to and enforce the rules and standards of law prescribed by it in these statutes. *Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co.* 635 (638).

DUTY OF SHIPPER.

The law imposes upon shippers the duty of ascertaining the rates and conditions under which they ship, and noncompliance by a shipper with tariff rules affords no basis for a finding that rate legally applicable is unreasonable or discriminatory. *Good-Hopkins Lumber Co. v. G. N. Ry. Co.* 99 (100); *Reed Tobacco Co. v. C. & O. Ry. Co.* 201 (202).

EARNINGS.

Dairy products: Rates and minimum on articles transported in refrigerator cars with car-mile and ton-mile earnings as compared with car-mile and ton-mile earnings on poultry, butter, eggs, and cheese, Chicago to New York. *National Poultry, Butter & Egg Asso. v. B. & O. S. W. R. R. Co.* 34 (52).

ELECTRIC LINE.

Defendant's charge for switching cars to and from the point of connection between its line and complainant's at Bellewood, Ill., higher than exacted from carriers other than the complainant, not found unreasonable or unduly prejudicial. *Aurora, Elgin & Chicago R. R. Co. v. I. H. B. R. R. Co.* 331 (333).

Single-trip fare of 10 cents and commutation fare of \$1 for 14 rides between East Liverpool, Ohio, and Chester, W. Va., over defendant's electric line, approved. *City of East Liverpool, Ohio, v. S., E. L. & B. V. T. Co.*, 563 (569).

Rates on fruits from certain points on Boise Valley Traction Co., an electric line, to defined territories, Colorado common points and east, found unduly prejudicial to extent they exceeded the blanket rates from Boise, Idaho via the O. S. L. R. R. *Hurst v. B. V. T. Co.* 697 (702).

EMBARGOES.

On gum lumber from Helena, Ark., to Buffalo, N. Y., reconsignment to Medina refused because of alleged embargoes. Shipment held at Buffalo and subsequently moved under new bill of lading to Medina. *Held*: As no embargoes existed against Buffalo or Medina, transportation and demurrage charges were illegal. Reparation awarded. *Nichols & Cox Lumber Co. v. N. Y. C. R. R. Co.* 174.

Average agreement provided for termination "if payment unnecessarily delayed or declined." By reason of a flood at Dayton, embargo was placed. When embargo lifted cars were bunched and could not be unloaded within free time. Demurrage accrued and payment refused, whereupon agreement was terminated. *Held*: As rules made no provision for detention on account of bunching resulting from an act of God, charges lawfully accrued and carrier justified in terminating agreement. *Davis Sewing Machine Co. v. P., C., C. & St. L. R. R. Co.* 191.

Carload of machinery from Springfield, Ohio, consigned to forwarding company, Sixtieth Street, New York, but on account embargo reconsigned to Thirty-third Street station. Part of shipment removed and remainder placed in storage and not removed until several months later. Demurrage and track-storage charges not shown unreasonable. *Barber & Co. v. C., C., C. & St. L. Ry. Co.* 194.

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Demurrage does not accrue, under a general demurrage tariff, against a car which has been offered for reconsignment to an embargoed point upon the general principle that demurrage is assessable for detention for which the shipper is directly responsible and can avoid or abate, while an embargo is placed by reason of the carrier's disability. *Id.* (215).

Complainant requested reconsignment to Greencastle, Pa., of a c. l. of lumber billed from Alexander City, Ala., to Roanoke, Va., while in transit. Carrier declined because of embargo. Arrived Roanoke, there stored and subsequently forwarded under new bill of lading. Tariff naming joint rate contained no inhibition against reconsignment to embargoed points. *Held*: Charges illegal to extent they exceeded joint rate. Reparation awarded. *Brabston v. C. of G. Ry. Co.* 459.

On brush blocks, l. c. l., from Kane, Pa., to Boston, Mass., moving rail-and-water, due to embargo at Philadelphia, Pa., complainant routed shipments via Baltimore, Md. Combination rate legally applicable. Lower joint rate in effect via Philadelphia. *Held*: As shipments moved in compliance with complainant's routing instructions rates assessed not shown unreasonable. *Holgate Bros. Co. v. P. R. R. Co.* 515.

ERRONEOUS WEIGHT. *See* **WEIGHT.**

ERROR. *See also* **MISQUOTATION OF RATE.**

Shippers and carriers alike are charged with knowledge of tariff provisions, and the Commission is without authority to award reparation or authorize waiver of undercharges solely upon a showing that erroneous advice as to loading was given by defendant's agent. *United Shoe Machinery Co. v. B. & M. R. R.*, 28 (30).

Complainant listed in defendant's tariff as an industry instead of a connecting carrier, which error should be corrected. *Aurora, Elgin & Chicago R. R. Co. v. I. H. B. R. R. Co.* 331 (334).

EVIDENCE. *See also* **PROOF.**

Contention that the evidence taken in this case prior to federal control is irrelevant and insufficient to support the issues raised in the supplemental complaint is untenable. *Willamette Valley Lumbermen's Asso. v. S. P. Co.* 250 (257, 258).

EXCESSIVE WEIGHT. *See* **WEIGHT.**

EXHIBITS. *See* **APPENDIX.**

EXPORT BILL OF LADING. *See also* **BILL OF LADING.**

Following *New York Produce Exchange*, 46 I. C. C., 666, assessment of storage at the ports of Newport News, Va., and New York, N. Y., on shipments of salmon on through export bills of lading from San Francisco, Calif., to London, England, found not unreasonable, unjustly discriminatory, or unduly prejudicial. *Peterson Co. v. A., T. & S. F. Ry. Co.* 401.

One of the tariff conditions precedent to the issuance of a through export bill of lading is that the shipper shall guarantee the payment of storage charges which may be occasioned at the ports. *Id.* (402).

EXPORT RATES.

Following *Cottonseed Products to Port Arthur, Tex.*, 38 I. C. C., 378, increased rates on cottonseed cake and meal from certain points in Texas to Port Arthur, Tex., for export, found not justified. Reparation awarded. *Texas Export & Import Co. v. A. & S. Ry. Co.* 583.

EXPORT TRAFFIC.

Charges on dressed beef from various points to Boston, Mass., there stored and subsequently exported to France, found unduly prejudicial to traffic moving from the storage warehouse to the docks of the Boston & Albany at East Boston to the preference of similar traffic stored and subsequently forwarded to the docks of the Boston & Maine. *Armour & Co. v. B. & A. R. R. Co.* 244 (247).

EXPRESS COMPANIES.

Failure of defendants to accord certain complainants free collection and delivery service on interstate express shipments performed for other shippers in their vicinity in Newark, N. J., results in undue prejudice to such complainants and the locality in which their plants are situated. *Butterworth-Judson Corp. v. Adams Exp. Co.* 386 (389).

EXPRESS RATES.

Express rates on strawberries from Independence, La., Jackson, Miss., and Ripley, Tenn., to Providence, R. I., based on rates per 100 pounds and not on estimated weight per crate, not shown unreasonable except on certain shipments. *Providence Fruit & Produce Exchange v. American Exp. Co.* 167.

On horses from Pittsburgh, Pa., to Jersey City, N. J., defendant could not furnish commercial horse cars as requested. Ordinary stock cars, without stalls, were accepted. *Held:* Defendant under no legal obligation to comply with order for special equipment within short time necessary to meet complainant's requirements, and express charges legally applicable on basis of cars accepted not shown unreasonable. *Northwestern Trading Co. (Inc.) v. Adams Exp. Co.* 211.

EXPRESS RATES—Continued.

Certain data and recommendations regarding a proposed increase in express rates reported upon for the Director General, at request made under section 8 of the federal control act. In re Increases in Express Rates, 263.

FACILITIES.

Proposed discontinuance of the facilities of the Keystone Elevator & Warehouse Co. at North Philadelphia, Pa., as a delivery point for hay and straw, found justified. Philadelphia Hay and Straw Deliveries, 324.

FACTOR.

In 44 I. C. C., 660, rates on cotton seed from Florida to Bainbridge, Ga., found unreasonable to extent components to River Junction, Fla., exceeded rates in effect prior to movement and subsequently established. Upon rehearing, rates legally applicable found unreasonable to same extent, and that the component from River Junction to Bainbridge exceeded the Class M rate. Reparation awarded. Bainbridge Oil Co. v. M. & B. R. R. Co. 9.

Combination rates on eggs from interior Iowa points to points east of the Indiana-Illinois state line found unreasonable in so far as the component to the Mississippi River exceeded the proportional class rates prescribed in *Interior Iowa Cities Case*, 28 I. C. C., 64. Reparation awarded. Bowman & Co. v. C., R. I. & P. Ry. Co. 177.

On lumber and forest products from Humbert, Pa., on the Ursina & North Fork Ry., to interstate destinations, increased rates for that portion of the haul to Ursina Junction, found justified as compared with rates from points on other short lines for similar distances. United Lumber Co. v. U. & N. F. Ry. Co. 199.

Through rate on bulk shelled corn, from Rushville, Ind., to Pocahontas, Va., reconsigned to Baltimore, Md., for export, found unreasonable due to component from Pocahontas to Baltimore. Reparation awarded. Cincinnati Grain & Hay Co. v. P., O., C. & St. L. R. R. Co. 248.

On crushed stone from Cedar Creek, Nebr., destined to Council Bluffs, Iowa, but diverted to Shenandoah, Iowa, rate of 50 cents per ton from Cedar Creek to Council Bluffs, assessed. Rate of 40 cents legally applicable. *Held*: Shipments overcharged and reparation awarded. National Supply Co. v. C., B. & Q. R. R. Co. 429 (430).

Combination rate on potatoes from Webbers Falls, Okla., to Shreveport, La., found unreasonable due to component from Warner, Okla., to Shreveport. Reparation awarded. Fort Smith Commission Co. v. M. V. R. R. Co. 489.

Shipments of ties from Pocahontas, Black Rock, and Elnora, Ark., consigned to Air Line Junction, Ohio, and Michigan City, Ind., were sold f. o. b. Thebes and Cairo, Ill. Complaint filed against rates only to Thebes and Cairo. Defendants contend that following the *Stevens Grocer Case*, 42 I. C. C., 396, the Commission can not award reparation, as the through rate from origin to ultimate destination was not assailed, *Held*: Contract was fulfilled upon delivery to designated carriers at those points. Reparation awarded. Johnson & Son v. St. L.-S. F. Ry. Co. 518 (520).

On a locomotive and tender, moving on their own wheels, under steam from Algoma, Oreg., to Klamath Falls, Oreg., and not under steam from Klamath Falls to Dunsmuir, Calif., rate charged for that portion of the haul from Klamath Falls to Dunsmuir found unreasonable. Reparation awarded. Algoma Lumber Co. v. S. P. Co. 529.

On lumber from Brasfield, Ark., to Athens, Tenn., via Memphis, combination commodity rates assessed. Lower Class M distance rate in effect from Memphis, but tariff provided for their use only when no specific rates published. *Held*: Charges assessed legally applicable and not shown unreasonable or unduly prejudicial as compared with rates from Memphis and between other points for similar and greater distances. Brown & Sons Lumber Co. v. C., R. I. & P. Ry. Co. 549.

FACTOR—Continued.

Local commodity rates on circular table tops and tops with rims attached, from St. Louis, Mo., Peoria and Chicago, Ill., and points taking same rates, to Wichita, Kans., and when used as factors in making through rates from Portsmouth, Ohio, found unreasonable to extent they exceeded the Class A rates applicable to furniture stock in the white. *Wichita Wholesale Furniture Co. v. A., T. & S. F. Ry. Co.* 586.

Combination rate legally applicable on steel relay rails, from Mangham, La., to Ramsay, La., by way of Natchez, Miss., found unreasonable due to factor from Mangham to Natchez. Reparation awarded. *Zelnicker Supply Co. v. St. L., I. M. & S. Ry. Co.* 677.

FARES. See **PASSENGER FARES.**

FATTENING IN TRANSIT. See **TRANSIT ARRANGEMENTS (FATTENING AND FEEDING).**

FEDERAL CONTROL ACT. See also **DIRECTOR GENERAL.**

Section 10, construed. *Willamette Valley Lumbermen's Asso. v. S. P. Co.* 250 (257).

The words "just and reasonable" as used in the federal control act obviously bear a similar or closely analogous meaning to that attaching to their use in the act to regulate commerce. *Id.* (257, 258).

The law requires that the Commission in determining questions concerning rates initiated by the President shall take into consideration the fact that the defendant carriers are being operated as a unified and coordinated national system and not in competition. *Id.* (258).

There is no authority in the federal control act for perpetuating during the period of federal control of a rate adjustment that is unlawful under the act to regulate commerce. *Id.* (260).

The act to regulate commerce remains in full force and effect except in so far as it may be inconsistent with the provisions of the federal control act or other acts applicable to federal control or with any order of the President. *Johnston v. A., T. & S. F. Ry. Co.*, 356 (361); *Rice Potato Co. v. B. & O. R. R. Co.* 364 (368).

Passage of, held not to affect provisions of section 4. *Johnston v. A., T. & S. F. Ry. Co.* 356 (361).

No basis for any distinction between competitive and noncompetitive traffic while roads under federal control. *California Canneries Co. v. S. P. Co.* 501 (503).

That part of section 10 of the federal control act relating to recommendation of the President as to the necessity for increasing railway operating revenues, cited. *Reliance Mfg. Co. v. I. C. R. R. Co.* 607 (611).

Willamette Valley Lumbermen's Asso. Case, 51 I. C. C., 250, cited and followed with respect to the Commission's powers over rates initiated under the federal control act. *American Window Glass Co. v. W. M. Ry. Co.* 704 (710).

Power of Commission to consider at this time applications for relief from provisions of the fourth section of the act to regulate commerce, set forth in *Johnson Case*, 51 I. C. C., 356. *Heider Mfg. Co. v. C. G. W. R. R. Co.* 713 (718).

In view of its history and its relation to the Southern Pacific and the Santa Fe, the Northwestern Pacific Railroad, by the federal control act, must be considered a part of those systems rather than an independent line. *Pacific Lumber Co. v. N.-W. P. R. R. Co.* 738 (757, 769).

Contended that any subject matter treated by the federal control act any pre-existing statute inconsistent therewith was repealed by implication. *Id.* (767).

The federal control act stated the rules which govern rates made by the Director General, and the act to regulate commerce governs defendants that are not under federal control. *Id.* (768).

FEDERAL CONTROL ACT—Continued.

If it be taken that the action of the Director General by Order No. 28, merely imposed a surcharge and that only the increase is within the purview of the federal control act, then the increase applies equally and does not alter the general effect of the rate structure, and the imposition of a flat increase would not eliminate its obnoxious features. *Id.* (770).

Lines under a uniform and coordinated national control by order of the Director General are not competitive. *Id.* (770).

Rates found unreasonable both as to roads operating under federal control and under private control. *Id.* (772).

**FEEDING IN TRANSIT. See TRANSIT ARRANGEMENTS (FATTENING AND FEEDING).
FERRY CAR.**

Defined. *United Shoe Machinery Co. v. B. & M. R. R.* 28.

FERRY CAR SERVICE. See TRAP CAR SERVICE.

FINANCIAL CONDITIONS.

No consideration given to precarious financial condition of the Boise Valley Traction Co., inasmuch as the local rates of the traction line, the proportions which it receives out of the through rates, are not in issue. *Hurst v. B. V. T. Co.* 697 (700, 701).

FIXING RATES.

The Supreme Court has held that the act of prescribing a rate for the future is legislative, while the act of awarding a sum of money in reparation of damages sustained because of a violation of the law, is judicial in its nature. *Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co.* 635 (638).

The fixing of a rate for the future, whether absolute or maximum, is not legislation, but is the completion of the legislative purpose by applying the rule of action which Congress has prescribed to the facts in each particular case as ascertained by investigation and hearing. *Id.* (638).

While fixing of maximum rates for the future must be at a definite, precise figure, the reasonableness of the exact figure decided upon is not susceptible of absolute demonstration. It is the concrete expression of the Commission's best judgment, exercised upon the record. The definite standard of reasonableness of the past rate as a basis for reparation is not susceptible of ascertainment in any other way. *Id.* (639).

In fixing the rate for the future the Commission must look to the purposes of the law in preventing the wrongs against which it is aimed, and upon the ascertained facts must apply its judgment as to what will be the reasonable rate and make such order as will best carry out those purposes. In doing this it is not essential that it shall be found that actual and definite damages has resulted to persons in the past. *Id.* (639).

Where the question of what is the reasonable rate for the future, or what would have been a reasonable rate for the past, is a close one on the record, the Commission may in many cases be reasonably well satisfied as to what should be done for the future, while hesitating to apply to past transactions as a basis for reparation, the rate fixed for the future. *Id.* (641).

Carriers are required by law to initiate and establish their rates, and they must of necessity, acting within human limitations, exercise their judgment in the first instance, just as the Commission does upon complaint and investigation in the second instance. *Id.* (641).

FLEXIBLE LIMIT OF JUDGMENT.

Whatever may be the limitations upon the exercise of a sound discretion or a reasonable flexibility of judgment in prescribing maximum rates for the future, the Commission holds, as has frequently been held, that "the Commission is not justified in awarding damages except on a basis as certain and definite in law and in fact as is essential to the support of a final judgment or decree requiring the payment of a definite sum of money by one party to another." *Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co.* 635 (638-639).

FLEXIBLE LIMIT OF JUDGMENT—Continued.

The domain for the legal exercise of a sound discretion and reasonable flexibility of judgment has not been closed against the Commission so that it is forbidden to shape its action in such manner as will, in view of all circumstances of the case, best promote the ends of justice, taking into account the public as well as the private interests involved. *Id.* (643).

FLOOD.

Average agreement provided for termination "if payment unnecessarily delayed or declined." By reason of a flood at Dayton, embargo was placed. When embargo lifted cars were bunched and could not be unloaded within free time Demurrage accrued and payment refused, whereupon agreement was terminated. *Held:* As rules made no provision for detention on account of bunching resulting from an act of God, charges lawfully accrued and carrier justified in terminating agreement. *Davis Sewing Machine Co. v. P., C., C. & St. L. R. R. Co.* 191.

FREE TIME. See also DEMURRAGE.

On benzol, oils, sulphuric acid, charcoal, and chloride of sulphur, delivered to interchange siding at Midland, Mich., complainant moved shipments to points within its plant enclosure and held cars in excess of free time upon tracks constructed for use of complainant only. *Held:* Storage charges assessed found not legally applicable and refund directed. *Dow Chemical Co. v. P. M. R. R. Co.* 1.

FULL VISIBLE CAPACITY.

The proper place to determine whether a car is loaded to full visible capacity is at origin and not at destination. *Feltus Lumber Co. v. G. N. Ry. Co.* 571 (578). On pine lumber from Wahkiakus, Wash., to Vandalia and Dodson, Mont., shippers in order to secure the benefit of lower rate based on actual weight, minimum 30,000 pounds, required to certify on bill of lading that cars were loaded to full visible capacity. No such notation made and legally applicable rate based on 54,000-pound minimum not shown unreasonable. *Good-Hopkins Lumber Co. v. G. N. Ry. Co.* 99.

GROUP RATES.

Rate charged on coal from Liberal, Mo., to Burlington, Kans., found unreasonable and unduly prejudicial to Liberal to extent it exceeded rate applicable from mines in the Pittsburg-Cherokee group to the same destination. Reparation awarded. *Midland Coal Co. v. St. L. & S. F. R. R. Co.* 313.

Increased rates on pine lumber from Crossett, Ark., to Baltimore, Md., Philadelphia, Pa., New York, N. Y., Ottawa, Ont., and other eastern destinations, higher than from other points in the same group, found reasonable. *Crossett Lumber Co. (Inc.) v. A. & L. M. Ry. Co.* 438.

Rate on scrap iron from Elizabethport and Bayway, N. J., to Sharon, Pa., a point in the 67 per cent group, not shown unreasonable as compared with rate in effect to Pittsburgh, Pa., *Kaufman & Sons Co. v. C. R. R. Co. of N. J.* 521.

Rates legally applicable on sulphuric acid from Copperhill, Tenn., to Gibbstown and Carney's Point, N. J., found unreasonable to extent they exceeded the rates maintained to New York, N. Y., and other points located in the New York rate group. Reparation awarded and rates prescribed. *Du Pont de Nemours Powder Co. v. L. & N. R. R. Co.* 589.

In dealing with group rates justice demands consideration of the groups as a whole. *Albrecht v. N. P. Ry. Co.*, 601 (603).

Rates on hardwood lumber from Blissville, Ark., in group 4-D, to points in Missouri, Kansas, Nebraska, Iowa, and Colorado, not shown unreasonable as compared with rates from Dermott, Ark., and other points in group 8-D. *Bliss Cook Oak Co. v. M. P. R. R. Co.* 734.

HAWAIIAN ISLANDS.

Commission not empowered to fix standards of time for. Standard Time Zone Investigation, 273 (285).

HEATER CARS.

The demand for heater cars and lined cars during the season from November to April is heavy and prompt release of equipment is necessary. *New York & New Jersey Produce Co. v. N. Y., N. H. & H. R. R. Co.* 399 (400).

ICING. *See also* Refrigeration.

Statement in regard to the icing of cars. Appendix 2. National Poultry, Butter & Egg Asso. *v. B. & O. S. W. R. R. Co.* 34 (53).

INBOUND AND OUTBOUND.

Disadvantage against a distributing point can not be predicated merely upon the fact that the combination of inbound and outbound rates through that point exceeds the combination available through a competitive distributing point. *Johnston v. A., T. & S. F. Ry. Co.* 356 (359).

INDUSTRIAL SWITCHING. *See also* SWITCHING.

A determination that it is the duty of the line-haul carrier to perform a particular switching and spotting service, for the performance of which by the industry an allowance should be paid, presupposes that the nature of the industry is such as to permit the performance of that service by the carrier. *National Malleable Castings Co. v. P. & L. E. R. R. Co.* 537 (542).

Citations to cases decided subsequent to the *Car Spotting Charges*, 34 I. C. C., 609, in which the Commission fixed allowances for switching to and from tracks of the line-haul carrier performed by the industry itself either directly or through common-carrier industrial line. *Id.* (541).

Refusal of defendants to compensate complainant for the expense of interchange switching of cars to and from its plant at Sharon, Pa., while performing such service without additional charge for other foundaries, found to subject complainant to undue prejudice. *Id.* (543).

INJUNCTION.

Injunctions restraining defendants from taking baggage cars, supplied to express companies and equipped for transporting live fish, granted by state and federal courts. *Lay v. American Exp. Co.* 373 (374).

INSPECTION IN TRANSIT. *See* TRANSIT ARRANGEMENTS (INSPECTION AND ASSEMBLING).**INSULATED CARS.**

The demand for heater cars and lined cars during the season from November to April is heavy and prompt release of equipment is necessary. *New York & New Jersey Produce Co. v. N. Y., N. H. & H. R. R. Co.* 399 (400).

INTERCHANGE SWITCHING. *See* INDUSTRIAL SWITCHING; SWITCHING.**INTERCORPORATE RELATIONSHIP.**

In view of its history and its relation to the Southern Pacific and the Santa Fe, the Northwestern Pacific R. R., by the federal control act, must be considered a part of those systems rather than an independent line. *Pacific Lumber Co. v. N. W. P. R. R. Co.* 738 (757, 769).

INVESTIGATION.

Standard Time Zone Investigation, 273.

JOBBER'S RATES.

Rates on hides, wool, and tallow, l. c. l., from certain points on the St. L.-S. F. Ry. in Oklahoma to Wichita, Kans., found unreasonable to extent they exceeded jobbers' rates formerly in effect. Reparation awarded. *Johnston v. A., T. & S. F. Ry. Co.* 356 (360).

JOBGING POINTS.

Advantage of location, competitive conditions, the volume and flow of traffic, and numerous other considerations must be given due weight in determining the adjustment of rates in and out of different jobbing points. *Johnston v. A., T. & S. F. Ry. Co.* 356 (359).

JOINT RATES.

Commission has repeatedly held that a joint rate is unreasonable to the extent that it exceeds the lowest combination of rates which would be applicable if the joint rates were canceled. *American Cyanamid Co. v. M. C. R. R. Co.* 236 (237).

Complaint seeking the establishment of joint rates on lumber and forest products from certain points in the Willamette Valley, Oreg., to various points in northern states and Canada, on the "coast group" basis which applies from Portland and other points along the Columbia River and in western Washington, *Held*: Joint rates should be established. *Willamette Valley Lumbermen's Asso. v. S. P. Co.* 250 (253, 263).

Joint and combination through rates made on specific bases applicable on various commodities from certain points in eastern, southern and central states to certain destinations in Iowa found unreasonable, and where unprotected by fourth section applications otherwise, unlawful. Reparation awarded. *Heider Mfg. Co. v. C. G. W. R. R. Co.* 713.

JUDICIAL FUNCTION.

The Supreme Court has held that the act of prescribing a rate for the future is legislative, while the act of awarding a sum of money in reparation of damage sustained because of a violation of the law, is judicial in its nature. *Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co.* 635 (638).

JUNCTION POINT RATES.

Joint class P rate on lumber from West, N. C., to Richmond, Va., and various points in trunk line territory, which exceeded combination rates to and from Warsaw, N. C., the junction point, found unreasonable and unduly prejudicial to extent they exceeded rates one-half cent higher than rate from the junction point, in effect prior to June 25, 1918. *Loyd v. A. & C. R. R. Co.* 121 (123).

JUNK.

Rates assessed on basis of billing changed at destination on old boiler flues and scrap boiler plate, originally billed as scrap iron, from Port Arthur, Tex., to St. Louis, Mo., found legally applicable. *Schwartz v. St. L.-S. F. Ry. Co.* 145; Iron or steel articles which have a recognized commercial value other than that of the elementary metal from which they are manufactured are not properly described as scrap iron. *Id.* (146).

Fifth-class rate on scrap copper, in bales, from Atlanta, Ga., to Perth Amboy, N. J., found unreasonable to extent it exceeded lower commodity rate in effect from and to the same points over the route of movement when packed in barrels or boxes. Reparation awarded. *Stein & Co. v. A., B. & A. Ry. Co.* 533.

JURISDICTION.

Power of Commission to require defendant to increase its supply of cars seems doubtful, in view of *United States v. P. R. R. Co.*, 242 U. S. 208. *Diamond Lumber Co. v. C., M. & St. P. Ry. Co.* 78 (85).

The Commission has no power to enforce agreements contained in city ordinances, between carrier and city. *Cape Girardeau Commercial Club v. I. C. R. R. Co.* 105 (107).

It is inconceivable that the Congress did a vain thing in conferring upon this Commission power to determine whether or not the rates initiated by the Director General are just and reasonable. *Willamette Valley Lumbermen's Asso. v. S. P. Co.* 250 (261).

JURISDICTION—Continued.

Under contract specifying termination by either party on 60 days notice, express companies supplied baggage cars, which complainants equipped for transporting live fish. Express companies requested to return cars, whereupon agreement was terminated. Prayer that defendants desist from taking cars and to continue to furnish, *Held*: Issue not within Commission's jurisdiction. *Lay v. American Exp. Co.* 373.

The Commission acts only by virtue of powers conferred by the act. *Id.* (375). Jurisdiction to award damages for failure to furnish cars upon reasonable request as required by section 1, not passed upon. *Oden-Elliott Lumber Co. v. A. C. Ry.* 403 (411).

The Commission has power to award damages only when they are suffered in consequence of a violation of the act. *Pittwood v. N. P. Ry. Co.* 535.

Chester branch an integral part of Steubenville, East Liverpool & Beaver Valley Traction Co., an electric line, and interstate fares thereover within the control and regulation of the Commission. *City of East Liverpool v. S., E. L. & B. V. T. Co.* 563 (565).

Jurisdiction of Commission over transportation to adjacent foreign country extends only to the haul within the United States. *Eastern Car Co. (Ltd.) v. C. G. Rys.* 627 (629).

While Congress, without investigation or hearing, could prescribe either the absolute or maximum rate to be charged for the future, it could not perform the judicial function of entering a judgment in reparation of damages either with or without a hearing; nor could it confer upon this Commission power to make an order awarding damages otherwise than pursuant to its findings and conclusions upon investigation and full hearing. *Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co.* 635 (638).

Willamette Valley Lumbermen's Asso., 51 I. O. C., 250, cited and followed with respect to the Commission's powers over rates initiated under the federal control act. *American Window Glass Co. v. W. M. Ry. Co.* 704 (710).

"JUST AND REASONABLE."

The words "just and reasonable" as used in the federal control act obviously bear a similar or closely analogous meaning to that attaching to their use in the act to regulate commerce. *Willamette Valley Lumbermen's Asso. v. S. P. Co.* 250 (257, 258).

LACHES.

The Commission has not assumed to shorten the period of the statute of limitations by holding that it will never award reparation for any part of the statutory period prior to the date of filing the complaint, nor attempted to lay down any rule that on account of alleged laches of a complaint in not protesting against the rates from time to time before the complaint was filed, reparation will not be awarded for ascertained damages merely because protest was not made. *Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co.* 635 (639-640).

LAWFUL RATES.

The law does not presume bad faith on the part of the carriers in initiating and establishing their rates, and the rates they establish are binding as the lawful rates until overturned or modified after they have been ascertained upon full hearing and investigation to be unreasonable. *Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co.* 635 (641).

LEGAL RATES. See also OVERCHARGES.

Class A rates charged on shipment of emigrant movables, including live stock, from Waucoma, Iowa, to Midland, S. Dak., exceeded combination class B rate legally applicable. Legal rate found unreasonable to extent it exceeded joint class B rate subsequently established. *Carr v. C., M. & St. P. Ry. Co.* 205.

LEGAL RATES—Continued.

Shipment of cattle loaded at Fort Worth, Tex., stockyards and switched to Hodge⁴ which is within the switching limits of Fort Worth, for movement to destinations in Oklahoma. Tariffs in effect named lower rate on shipments loaded at Hodge, but inasmuch as shipments originated at Fort Worth, rates assessed found legally applicable and not unreasonable. *Carroll & Co. v. A., T. & S. F. Ry. Co.* 395.

On pine wood, from points in Georgia to Chattanooga, Tenn., no rate specifically applicable on bolts of the kind shipped. Rates specifically provided for heading bolts, shingle bolts and stave bolts, assessed. *Held*: Rates assessed illegal to extent they exceeded those applicable to "wood, other than chestnut," named in another tariff. Reparation awarded. *Phillips Excelsior Co. v. T., A. & G. R. R. Co.* 425.

On liquid petrolatum from Richmond, Calif., to Portland, Oreg., and other interstate destinations, second-class rate on the shipments to Portland, and combination rate, composed of the second-class rate plus a commodity rate on "drugs, medicines and chemicals" to the other destinations, found legally applicable. Adjustment of charges directed. *Standard Oil Co. (California) v. A., T. & S. F. Ry. Co.* 598.

On blacksmith coal from Duluth, Minn., to Muncie, Ind., class D rate assessed. Combination rate legally applicable. *Held*: Legally applicable rate unreasonable to extent it exceeded \$3.85 per net ton. Reparation awarded. *Hull Co. v. C., M. & St. P. Ry. Co.* 612.

LEGISLATIVE FUNCTION.

The Supreme Court has held that the act of prescribing a rate for the future is legislative, while the act of awarding a sum of money in reparation of damages sustained because of a violation of the law, is judicial in its nature. *Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co.* 635 (638).

The fixing of a rate for the future, whether absolute or maximum, is not legislation, but is the completion of the legislative purpose by applying the rule of action which Congress has prescribed to the facts in each particular case as ascertained by investigation and hearing. *Id.* (638).

LESS-THAN-CARLOAD. *See* CARLOAD AND LESS-THAN-CARLOAD.

LIABILITY OF CARRIER. *See* LOSS AND DAMAGE.

LIEN.

Shipment received and transported as a carload lot, and the removal by the consignee, or on its orders, of the major part of the original carload, did not change its character, nor did the carrier in permitting such removal thereby forfeit any of its rights or waive its lien upon the property in whole or in part. *Barber & Co. v. C., C., C. & St. L. Ry. Co.* 194 (196).

"LIKE KINDS OF TRAFFIC." *See* ANALOGOUS ARTICLES; COMPARATIVE RATES.

LIMITATION OF ACTION.

Inasmuch as no order issued, contention that petition for rehearing filed too late, under rule XV of Rules of Practice, is not well founded. *Lamb-Fish Lumber Co. v. Y. & M. V. R. R. Co.* 6 (7).

Allegation that defendants should not be given the advantage of the statute of limitations because their agents stated at different times that complainant would be reimbursed for the cost of spotting service, *Held*: Under the statute here involved "the lapse of time not only bars the remedy but destroys the liability." *Sharon Steel Hoop Co. v. P. Co.* 545 (548).

The Commission is precluded from awarding reparation on shipments moving more than two years before a complaint for the recovery of damages is filed, but not required to award reparation on all shipments covered by the complaint which moved within the two-year period. *Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co.* 635 (643).

LIMITATION OF ACTION—Continued.

The Commission has not assumed to shorten the period of the statute of limitations by holding that it will never award reparation for any part of the statutory period prior to the date of filing the complaint, nor attempted to lay down any rule that, on account of alleged laches of a complaint in not protesting against the rates from time to time before the complaint was filed, reparation will not be awarded for ascertained damages merely because protest was not made. *Id.* (639-640).

Illustrations of various situations in which the Commission has awarded reparation in some cases and not in others, and in awarding it for the full period of the statute of limitations in some cases and for different periods in others. *Id.* (640).

LOADING.

On chairs, s. u. and k. d., from Sheboygan, Wis., to Los Angeles, Calif., 50-foot car ordered, but two 40-foot cars furnished. Charges based on commodity rate with 12,000-pound minimum on each car assessed. *Held:* Had larger car been furnished entire shipment could have been loaded therein by knocking down a greater portion of the chairs. Charges illegal to extent they exceeded \$1.60 per 100 pounds, minimum 20,000 pounds on entire shipment. Reparation awarded. *Phoenix Chair Co. v. C. & N. W. Ry. Co.* 218.

Shipments of cattle loaded at Fort Worth, Texas, stockyards and switched to Hodge, which is within the switching limits of Fort Worth, for movement to destinations in Oklahoma. Tariffs in effect named lower rate on shipments loaded at Hodge, but inasmuch as shipments originated at Fort Worth, rates assessed found legally applicable and not unreasonable. *Carroll & Co. v. A., T. & S. F. Ry. Co.* 395.

The proper place to determine whether a car is loaded to full visible capacity is at origin and not at destination. *Feltus Lumber Co. v. G. N. Ry. Co.* 571 (578).

Standard 36-foot car will hold from 32 to 35 bales, or from 24,000 to 26,000 pounds of cottonseed hull shavings. *Farmers & Ginners Cotton Oil Co. v. A. G. S. R. R. Co.* 593-594.

LOADING AND UNLOADING.

On cement at Slater, Mo., notice of arrival mailed Aug. 19, 1914, and received 4 p. m. Aug. 20. Car partly unloaded Aug. 21. Further unloading denied on Aug. 22, due to refusal to pay demurrage. Shipment later offered for unloading free of demurrage, without acceptance, and ultimately sold. *Held:* No damages resulted prior to date upon which delivery was tendered free of demurrage, and any arising thereafter not attributable to a violation of the act. *Dulaney Bros. v. C. & A. R. R. Co.* 579.

LOCAL RATES. *See* COMBINATION RATES.

LOCATION. *See* ADVANTAGES AND DISADVANTAGES.

LOCOMOTIVE. *See* CARS MOVING ON OWN WHEELS.

LONG AND SHORT HAUL. *See also* SECTION 4; THROUGH AND LOCAL.

Ardmore, Okla.: Authority to maintain rates on hides, wool, and tallow, from Ardmore, Okla., to Wichita, Kans., the same as those maintained over direct routes of the A., T. & S. F. Ry., and to maintain higher rates from intermediate points east and south of Stuart, Okla., subject to certain conditions, granted the C., R. I. & P. Ry. Co. *Johnston v. A., T. & S. F. Ry. Co.* 356 (362).

Bonfield, Ill.: Shipment of lumber from Elk River, Idaho, to Bonfield, Ill., found overcharged to extent that charges exceeded those in effect to Seneca, Ill., a farther distant point. Fourth section relief denied and reparation awarded. *Potlatch Lumber Co. v. C., M. & St. P. Ry. Co.* 31 (33).

LONG AND SHORT HAUL—Continued.

Clarks and Grand Island, Nebr.: Authority to continue rates on brick from Monmouth, Ill., to, lower than rates on like traffic from Boone, Iowa, denied. *Sunderland Bros. Co. v. C. & N. W. Ry. Co.* 630 (632).

Cynthiana, Ky.: Rate charged on lumber from Sulligent, Ala., to Cynthiana, Ky., found unreasonable to extent it exceeded the rate in effect to Paris, Ky., a farther distant point. Reparation awarded. *Kentucky Lumber Co. (Inc.) v. St. L.-S. F. Ry. Co.* 203.

Haynies, Iowa: Class E rate on crushed stone from Louisville, Nebr., to Haynies, Iowa, found unreasonable to extent it exceeded lower commodity rate applicable to Dunbar, Nebr., when moving through Haynies. Reparation awarded. *Sunderland Bros. Co. v. C., B. & Q. R. R. Co.* 185.

Houston, Tex.: Authority to continue rates on sugar and green coffee from New Orleans and other points in Louisiana to Galveston, Tex., lower than maintained to Houston and from intermediate points, denied. *Chamber of Commerce, Houston, Tex. v. M. L. & T. R. R. & S. S. Co.* 653 (656, 658).

Kentucky points: Authority to continue rates on petroleum refined oil from Franklin, Pa., to Cynthiana and other Kentucky points, lower than on like traffic to or from intermediate points, denied. *Standard Oil Co. (Kentucky) v. N. Y. C. R. R. Co.* 140 (142).

Rice, Minn.: Authority to continue rates on potatoes from, to Cairo and various other points in Illinois and Iowa, higher than rates on like traffic to more distant points, denied. *Rice Potato Co. v. B. & O. R. R. Co.* 364 (368).

Trosky, Minn.: Rate legally applicable on beer, from La Crosse, Wis., to Trosky, Minn., found unreasonable to extent it exceeded commodity rate to Pipestone, Minn., a farther distant point, to which Trosky is intermediate. Reparation awarded. *Michel Brewing Co. v. C., B. & Q. R. R. Co.* 729.

Tulsa, Okla.: Authority to continue rate on sweet potatoes from De Queen, Ark., to Tulsa, Okla., higher than rates on like traffic to more distant points, denied. *Stough v. K. C. S. Ry. Co.* 683 (685).

LOSS AND DAMAGE.

Claim for refund of freight charges collected on shipment made to replace one damaged in transit, held to be a matter for adjustment as an integral part of claim for property damage. *Fords Porcelain Works v. L. V. R. R. Co.* 485.

The fact that the general use by shippers of a steel container would reduce the loss-and-damage claims of carriers, is not sufficient to justify a rule requiring carriers to compute freight charges on commodities shipped in such containers at the net weight of the contents. *Pneumatic Scales Corp. v. A. & R. R. R. Co.* 686 (689, 692).

Table showing how freight-claim payments compared with freight revenue for each year from 1906 to 1916. *Id.* (687).

Tables showing total payments made by railroads for loss and damage to freight during the year 1914, and chief causes thereof. *Id.* (688).

LOW RATES.

On feldspar from East Point and Atlanta, Ga., to Durham and Winston-Salem, N. C., charges legally applicable not shown unreasonable as compared with abnormally low rates established by defendant for the purpose of experimenting with this commodity, which rates were removed and former rates restored due to no further movement. *Felder v. S. Ry. Co.* 124.

MANUFACTURED ARTICLES.

Rate on plain sheet steel from Indiana Harbor, Ind., to Phoenix, Ariz., found legally applicable but unreasonable to extent it exceeded rate on punched sheet steel. Reparation awarded. *Inland Steel Co. v. I. H. B. R. R. Co.* 97.

MAPS.

Showing lines prescribed between standard time zones. *Standard Time Zone Investigation*, 273 (300-310).

Portraying relative location of lumber groups in California. *Pacific Lumber Co. v. N. W. P. R. R. Co.*, 738 (facing page 741).

MARKET COMPETITION. *See* COMPETITION (MARKET).

MARKETS.

The law does not impose upon a carrier the duty in all cases to give to points on a connecting independent railroad the same rates to markets that it gives to points on its own branch lines in the same region. *McGowan-Foshee Lumber Co. v. F., A. & G. R. R. Co.* 317 (322).

MAXIMUM RATE.

By the amendment of June 29, 1906, the Commission was for the first time given power to prescribe a reasonable maximum rate for the future. *Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co.* 635 (643).

MEASURE OF RATES.

Through rates admitted to be unreasonable to extent they exceeded combination of intermediate rates, but admission of carrier that a rate is unreasonable is not conclusive as to the reasonableness of a rate. *Sunderland Bros. Co. v. C., B. & Q. R. R. Co.*, 21 (22).

The division received out of joint rates to farther distant points is not the proper measure of the rate to an intermediate point. *Martin Brokerage Co. v. S. P. Co.*, 91 (93).

Carrier and city, in consideration of grant of certain privileges by city to carrier, contracted for maintenance of a definite rate on freight moving interstate. Carrier afterwards established a higher rate in manner provided by the act. *Held*: Commission not authorized, in testing the reasonableness of the increased rate to apply considerations other than those which would be generally applicable in any other case. *Cape Girardeau Commercial Club v. I. O. R. R. Co.* 105 (106, 107).

The fair measure of the reasonableness of a joint rate which exceeds a combination between the same points via the same route, is the lowest combination that would apply if the joint rates were canceled. *Boldt Co. v. C., B. & Q. R. R. Co.* 491 (492).

Commodity rates as a rule are lower than the class rates, but this fact does not establish the unreasonableness of the latter. *Helvetia Milk Condensing Co. v. A. & V. Ry. Co.* 625 (626).

MERGER.

Defendant express companies have been merged into one operating company since record in this proceeding was closed, and as defendant company herein is not a party to the proceeding an order directing the removal of the undue prejudice to which certain of the complainants have been found to be subjected, can not be entered upon the present pleadings. *Butterworth-Judson Corp. v. Adams Exp. Co.* 386 (389).

MILEAGE RATES. *See* DISTANCE RATES.

MINIMUM WEIGHT. *See also* WEIGHT.

In general: The publication of graduated carload minima implies an obligation upon carriers to furnish, upon reasonable notice, cars of corresponding capacity. *Feltus Lumber Co. v. G. N. Ry. Co.*, 571 (576).

Alcohol: On alcohol, in tank-car loads, from Henderson, Ky., to Mount Union and Emporium, Pa., cars were loaded to capacity. Charges assessed based on 50,000 pound minimum, established to place Henderson on a competitive basis with other alcohol producing points, not shown unreasonable. *Kentucky Peerless Distilling Co. v. L., H. & St. L. Ry. Co.*, 209.

MINIMUM WEIGHT—Continued.

Barrels: Following *Dallas Cooperage & Woodenware Co.* 45 I. C. C., 468, carload minimum of 14,000 pounds on empty slack barrels from Coffeyville, Kans., and Joplin, Mo., to Sapulpa, Okla., found unreasonable to extent it exceeded 10,000 pounds. Reparation awarded. *Bartlett-Collins Glass Co. v. A., T. & S. F. Ry. Co.* 496 (497).

Celery: Rate on celery from Antioch, Calif., to Portland, Oreg., found justified as compared with lower rate via another route, which rate was subsequently established via route of movement, but 24,000 pound minimum held unreasonable to extent it exceeded 20,000 pounds. *Martin Brokerage Co. v. S. P. Co.* 91.

Lumber: On pine lumber from Wahkiakus, Wash., to Vandalia and Dodson, Mont., shippers in order to secure the benefit of lower rate, based on actual weight, minimum 30,000 pounds, required to certify on bill of lading or shipping receipts that cars were loaded to full visible capacity. No such notation made and legally applicable rate, based on 54,000 pounds minimum, not shown unreasonable or discriminatory. *Good-Hopkins Lumber Co. v. G. N. Ry. Co.* 99.

Lumber: Rules under which carriers refuse to accept orders for cars of cubical capacity of less than 2,400 cubic feet, or of more than certain specified cubic capacity, while tariffs named graduated minima for cars of less or greater capacity when tendered for carriers' convenience, held unreasonable and unduly prejudicial. *Feltus Lumber Co. v. G. N. Ry. Co.* 571 (576).

Lumber: Cubic capacity basis for lumber carload minima not justified. *Id.* (574).

Strawberries: Minimum weight of 17,000 pounds on, moving in refrigerator cars, not found unreasonable. *Providence Fruit & Produce Exchange v. American Exp. Co.* 167 (169).

MISBILLING. See BILLING.**MISQUOTATION OF RATE.**

On scrap iron from Rahway, N. J., to Lebanon, Pa., complainant advised that same rate applied via route of movement as via another route. Rates in effect were different, and complainant routed shipment via route over which higher rate applied. *Held:* Not misrouted, and rate charged not shown unreasonable or unjustly discriminatory. *Fechheimer Steel & Iron Co. v. P. R. R. Co.* 183.

Misquotation of rate by carrier's agent affords no basis for an award of reparation. *Fechheimer Steel & Iron Co. v. P. R. R. Co.* 183; *Fords Porcelain Works v. L.V. R. R. Co.* 485 (486); *United Shoe Machinery Co. v. B. & M. R. R.* 28 (30).

MISROUTING.

In original report 42 I. C. C., 470, rates on gum and oak lumber from Charleston, Miss., to Chicago, Ill., for P., C., C. & St. L. Ry. delivery, found illegal and reparation due. Defendants refused to verify reparation statement covering shipments not actually delivered by the Panhandle. Upon rehearing certain shipments found misrouted, and on shipments unrouted shipper entitled to lowest rates available. Reparation awarded. *Lamb-Fish Lumber Co. v. Y. & M. V. R. R. Co.* 6.

On imported blackstrap molasses from Harvey, La., to St. Louis, Mo., and East St. Louis, Ill., initial carrier's agent ignored routing instructions specified by shipper and forwarded shipment via route taking higher rate. *Held:* Misrouted and reparation awarded. *International Molasses Co. v. M. L. & T. R. R. & S. S. Co.* 147.

Shipment of distillers' dried grain from Louisville, Ky., to Alexandria, Va., delivered to S. Ry. as initial carrier. Lower rate applied via other routes. *Held:* As rate charged was the lowest rate applicable with Southern as initial carrier, shipment not misrouted. *Dewey Bros. Co. v. S. Ry. Co.* 160 (161).

MISROUTING—Continued.

On scrap iron from Rahway, N. J., to Lebanon, Pa., complainant advised that same rate applied via route of movement as via another route. Rates in effect were different, and complainant routed shipment via route over which higher rate applied. *Held*: Not misrouted and rate charged not shown unreasonable or unjustly discriminatory. *Fechheimer Steel & Iron Co. v. P. R. R. Co.* 183.

On lumber from Pineville, La., to Suffern, N. Y., complainant requested re-shipment at Cincinnati, Ohio. Shipment moved via Potomac Yard, Va., and instructions could not be complied with. Arrived at Lackawaxen, Pa., thence reconsigned to Suffern. *Held*: Inasmuch as same rate applied, movement via either route complied with routing instructions. Shipment not misrouted but found overcharged. *Beekman Lumber Co. v. L. Ry. & Nav. Co.* 451.

Carload of posts moved via interstate route from Boy River, Minn., to Minneota, Minn. Lower rate in effect via intrastate route. *Held*: Shipment misrouted by initial carrier. Reparation awarded. *Page & Hill Co. v. C., St. P., M. & O Ry. Co.* 487.

Rates on potatoes from Carpenter and Otranto, Iowa, moving via Mason City, Iowa, were rates the same as from Lyle, Minn. Shipments tendered unrouted and those moving through Lyle via Austin, Minn., at rates higher than via Mason City, found misrouted. Reparation awarded. *Varley-Wolter Co. v. B. & O. R. R. Co.* 493.

On lumber from Arcola, Ga., to New York and Corono, N. Y., shipper specified "P. R. R. delivery." Agent billed via Richmond, Va. Lower rate in effect via Pinners Point, Va. *Held*: Shipments misrouted. Reparation awarded, *National Wholesale Lumber Dealers' Asso. v. S. & S. Ry. Co.* 531.

On high explosives from Gibbstown, N. J., to East Radford, Va., routing instructions specified lines but no junction point. Shipments forwarded via junction point taking higher rate. *Held*: Misrouted. Reparation awarded. *Du Pont de Nemours & Co. v. W. J. & S. R. R. Co.* 553.

On fire brick from Haldeman, Ky., to Elk Mountain, N. C., bill of lading specified "Route, Asheville," but no rate inserted. Shipment moved via Lynchburg, Va., but routing instructions complied with. Lower rate applied by way of Knoxville, Tenn. *Held*: Not misrouted. *Walsh & Weidner Boiler Co. v. C. & O. Ry. Co.* 584.

On blacksmith coal from Duluth, Minn., to Muncie, Ind., carrier disregarded routing instructions and forwarded one shipment via route other than specified by shipper. Reparation awarded. *Hull Co. v. C., M. & St. P. Ry. Co.* 612 (613)

On high explosives from Emporium, Pa., to Thomasville, Pa., routing instructions specified "PRR c/o W. M." Shipment moved via Hagerstown, Md. Lower intrastate rate applied via Hanover, Pa. *Held*: Shipment misrouted. Reparation awarded. *Aetna Explosives Co. v. P. R. R. Co.*, 615.

MISTAKE. See **ERROR; MISQUOTATION OF RATE.**

MIXED CARLOADS.

Rates on cypress lumber and shingles, in straight or mixed carloads, or mixed with pine lumber and shingles, from Lake Charles, La., to points in Texas, found unreasonable in so far as they exceeded rates applicable on pine lumber. Reparation awarded. *Independent Cooperative Lumber Co. v. L. W. R. R. Co.*, 557.

MIXED SHIPMENT.

Following *Dulweber Co.*, 45 I. C. C., 549, and as compared with rate on a similar shipment from Sparta, Ill., to La Fayette, Ind., combination rate on a contractor's outfit, loaded on two cars, from McComb, Miss., to Walnut Ridge, Ark., not shown unreasonable. *Moreno-Burkham Construction Co. v. I. C. R. R. Co.*, 138.

NEGLIGENCE.

Shipper, through negligence, failed to comply with packing requirements of tariff on l. c. l. shipment of cigarettes, from Richmond, Va., to Seattle, Wash. Double first-class rate legally applicable not shown unreasonable. *Reed Tobacco Co. v. C. & O. Ry. Co.* 201.

NORTHWESTERN PACIFIC RAILROAD.

History of. *Pacific Lumber Co. v. N. W. P. R. R. Co.* 738 (756).

NOTICE OF ARRIVAL.

Failure of carrier's agent at destination to notify consignor that shipment was being held for delivery *Held*: Not to constitute a breach of duty under the act. *Central Pennsylvania Lumber Co. v. T. V. Ry. Co.* 465.

Carload of baled shavings arrived South Bend, Ind., from Odanah, Wis., July 6, 1916. Consignee not having an office in South Bend failed to receive notice of arrival mailed July 7. Disposition orders received and shipment delivered on August 9, to new consignee who did not release car until Aug. 15, *Held*: Demurrage charges assessed not shown unreasonable. *Schroeder Lumber Co. v. N. Y. O. R. R. Co.* 473.

"NOTIONS".

Defined. *Getz & Co. v. A., T. & S. F. Ry. Co.* 454 (455).

OPERATING CONDITIONS.

Transportation conditions are no more difficult as regards traffic from the Willamette Valley than from Columbia River or western Washington points, as the haul to Portland is on a water grade. *Willamette Valley Lumberman's Asso. v. S. P. Co.* 250 (253).

Comparison of physical and operating conditions of lines operating from the California coast group and Humbolt Bay points. *Pacific Lumber Co. v. N. W. P. R. R. Co.* 738 (752).

The weight to be given to dissimilarities of physical and operating conditions on lines serving competing points of origin depends to a large extent upon the perspective from which they are considered. *Id.* (754).

OPPOSITE DIRECTION. See BOTH DIRECTIONS.**ORDINANCE.**

Carrier and city, in consideration of grant of certain privileges by city to carrier contracted for maintenance of a definite rate on freight moving interstate. Carrier afterwards established a higher rate in manner provided by the act. *Held*: Commission not authorized, in testing the reasonableness of the increased rate to apply considerations other than those which would be generally applicable in any other case. *Cape Girardeau Commercial Club v. I. O. R. R. Co.* 105 (106, 107).

The Commission has no power to enforce agreements contained in city ordinances, between carrier and city. *Id.* (107).

Passed by city council of East Liverpool, Ohio, provided that fare to be charged over any street railway therein should not exceed 5 cents for a 10-mile trip, can not be held to preclude the defendant, from maintaining fares in excess of 5 cents for interstate transportation of passengers between East Liverpool, and Chester, W. Va. *City of East Liverpool, Ohio v. S., E. L. & B. V. T. Co.* 563 (566, 569).

Fact that a city ordinance was passed and contractual relations were entered into thereunder many years ago can give that ordinance and those contractual relations no more validity as a bar to the Commission's jurisdiction than if they had been recently adopted and entered into. *Id.* (569).

A city ordinance can not stand as a bar to the exercise of the power vested in Congress and delegated by it to this Commission to regulate the interstate fares. *Id.* (569).

OUT OF LINE HAUL.

On millet seed from Kanorado and Selden, Kans., to St. Louis, Mo., cleaned in transit at Beatrice, Nebr., charges for out of line haul found unreasonable and unlawful to extent they exceeded rate to St. Joseph, Mo., with transit privilege at Beatrice, plus proportional rate beyond. Reparation awarded. Pease Grain & Seed Co. v. C., R. I. & P. Ry. Co. 189.

OVERCHARGES.

Shipment of lumber from Elk River, Idaho, to Bonfield, Ill., found overcharged to extent that charges exceeded those contemporaneously in effect to Seneca, Ill., a farther distant point. Fourth section relief denied and reparation awarded. Potlatch Lumber Co. v. C., M. & St. P. Ry. Co. 31 (33).

Rate charged exceeded rate legally applicable, and legal rate found unreasonable to extent it exceeded rate subsequently established. Reparation awarded. Carr v. C., M. & St. P. Ry. Co. 205 (207).

Rates on cyanamid, in carloads, from Niagara Falls, Ontario to Shreveport, La., and other points in the south found to have been overcharged in certain instances. American Cyanamid Co. v. M. O. R. R. Co. 236.

On crushed stone from Cedar Creek, Nebr., destined to Council Bluffs, Iowa, but diverted to Shenandoah, Iowa, rate of 50 cents per ton from Cedar Creek to Council Bluffs assessed. Rate of 40 cents legally applicable. *Held*: Shipments overcharged and reparation awarded. National Supply Co. v. C., B. & Q. R. R. Co. 429 (430)

On l. c. l. shipments of sewing machines from Dayton, Ohio, to Bienville and other destinations in Louisiana, shipment to Bienville found overcharged and refund directed. Rates to other points found unreasonable to extent they exceeded the aggregate of intermediate rates on the lower Mississippi River crossings. Reparation denied. Davis Sewing Machine Co. v. P., O., O. & St. L. Ry. Co. 441.

On lumber from Pineville, La., to Suffern, N. Y., complainant requested reconsignment at Cincinnati, Ohio. Shipment moved via Potomac Yard, Va., and instructions could not be complied with. Arrived at Lackawaxen, Pa. thence reconsigned to Suffern. *Held*: Inasmuch as same rate applied, movement via either route complied with routing instructions. Shipment not misrouted but found overcharged. Refund directed. Beekman Lumber Co. v. L. Ry. & Nav. Co. 451.

No allowance made for stakes and supports on shipments of lumber as provided for in tariff resulted in overcharge. Brown & Sons Lumber Co. v. C., R. I. & P. Ry. Co. 549.

Billing on two carloads of "cut stone" from Carthage, Mo., to Pasadena, Calif. changed at destination to "marble" and rates applicable to marble assessed. *Held*: Shipments overcharged inasmuch as they were found to have consisted of cut stone. Reparation awarded. Carthage Marble & White Lime Co. v. M. P. R. R. Co. 619.

Charges collected exceeded rate legally applicable. Reparation awarded. Stough v. K. C. S. Ry. Co. 683 (684).

PACKING. *See also* CONTAINERS.

Double first-class rate on cigarettes, l. c. l., from Richmond, Va., to Seattle, Wash., not shown unreasonable. Shipper, through negligence, failed to comply with packing conditions of tariff. Reed Tobacco Co. v. C. & O. Ry. Co. 201.

Fifth-class rate on scrap copper, in bales, from Atlanta, Ga., to Perth Amboy, N. J., exceeded lower commodity rate when packed in barrels or boxes. Reparation awarded. Stein & Co. v. A., B. & A. Ry. Co. 533.

PACKING—Continued.

Rates and rules applicable on shipments in steel containers, as compared with the rates and rules applicable on shipments of the same commodities packed in or protected by other appliances, not shown unreasonable. *Pneumatic Scales Corp. v. A. & R. R. Co.* 686 (696).

Carriers have the right to decline shipments which are not so prepared or packed as to render them safe for transportation. *Id.* (696).

PANAMA CANAL ACT. *See* **BOAT LINES.**

PART UNLOADING.

Shipment received and transported as a carload lot, and the removal by the consignee, or on its orders, of the major part of the original carload did not change its character, not did the carrier in permitting such removal thereby forfeit any of its rights or waive its lien upon the property in whole or in part. *Barber & Co. v. C., C., C. & St. L. Ry. Co.* 194 (196).

On cement at Slater, Mo., notice of arrival mailed Aug. 19, 1914, and received 4 p. m. Aug. 20. Car was partly unloaded Aug. 21. Further unloading denied on Aug. 22, due to refusal to pay demurrage. Shipment later offered for unloading free of demurrage, without acceptance, and ultimately sold. *Held:* No damages resulted prior to date upon which delivery was tendered free of demurrage, and any arising thereafter not attributable to a violation of the act. *Dulaney Brothers v. C. & A. R. R. Co.* 579.

PARTIES.

Consignor, acting as agent for complainant, prepaid freight charges and was given full credit therefor by complainant. *Held:* Although complainant not a party to the transportation records, it is the real party in interest. *Sunderland Bros. Co. v. O., B. & Q. R. R. Co.* 185 (186).

Alleging unreasonable charges on a carload of coal from Lilly, Pa., consigned to Elm Grove, Wis., subsequently reconsigned to North Milwaukee, Wis., due to failure of defendants to hold at Ludington, Mich. *Held:* Defendants acted within their rights in refusing to hold and divert at the request of a stranger to transportation record and charges were legally assessed. *Callaway Fuel Co. v. C., M. & St. P. Ry. Co.* 227.

Procedure followed in determining whether or not the Director General was a necessary party. *Willamette Valley Lumbermen's Asso. v. S. P. Co.* 250 (255).

Complainant, neither consignor nor consignee, but acting as selling agent for consignor, guaranteed to consignee rate of \$1.10. Consignee paid charges and deducted from complainant's invoice difference between amount paid and those that would have accrued at \$1.10 rate. *Held:* Complainant who ultimately bore the difference party damaged. *Midland Coal Co. v. St. L. & S. F. R. R. Co.* 313 (314, 315).

While the Commission has frequently held that reparation would be awarded only to parties to the transportation record, it has in some instances recognized the propriety of making exceptions to this rule in cases where the complainant, though not a party to the transportation record, is the real party in interest and occupies the position of an undisclosed principal. *Id.* (314).

Rates attacked increased since filing of complaint by order of the Director General, and such rates subject to review by the Commission only when Director General is made an additional party defendant, and this not having been done, complaint dismissed. *Jones & Dunn v. St. L., I. M. & S. Ry. Co.* 339 (344); *Lumbermen's Asso. of Chicago v. A. A. R. R. Co.* 431 (435).

Defendant express companies have been merged into one operating company since record in this proceeding was closed, and as defendant company herein is not a party to the proceeding, an order directing the removal of the undue prejudice to which certain of the complainants have been found to be subject can not be entered upon the present pleadings. *Butterworth-Judson Corp. v. Adams Express Co.* 386 (389).

PARTIES—Continued.

Complainant who was neither consignor nor consignee, sold shipment to consignor under contract to deliver to its vendee. *Held*: Complainant real party in interest and entitled to reparation. *Advance Bag Co. v. C., C., C. & St. L. Ry. Co.* 467 (468).

PASSENGER FARES.

Single-trip fare of 10 cents and commutation fare of \$1 for 14 rides between East Liverpool, Ohio, and Chester, W. Va., approved. *City of East Liverpool, Ohio, v. S., E. L. & B. V. T. Co.* 563 (569).

PAST RATES.

While fixing of maximum rates for the future must be at a definite, precise figure, the reasonableness of the exact figure decided upon is not susceptible of absolute demonstration. It is the concrete expression of the Commission's best judgment, exercised upon the record. The definite standard of reasonableness of the past rate as a basis for reparation is not susceptible of ascertainment in any other way. *Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co.* 635 (639).

Before the Commission is authorized to award reparation for past transaction it is necessary to find and fix what would have been a reasonable rate at the time of the transactions which are the objects of the claim for reparation; and not only to find that the rate was unlawful, but, if it be the amount of the rate involved, that such rate was unreasonable and resulted in actual damage to the complainant; also to ascertain the amount of such damage. *Id.* (639).

In many cases the facts, circumstances, and conditions appearing upon investigation and hearing are so thoroughly convincing of the unreasonableness of the rates prevailing prior to the filing of the complaint, that the judgment and conscience of the Commission rest entirely satisfied that reparation should be made. *Id.* (640).

Where the question of what is the reasonable rate for the future or what would have been a reasonable rate for the past, is a close one on the record, the Commission may in many cases be reasonably well satisfied as to what should be done for the future, while hesitating to apply to past transactions as a basis for reparation the rate fixed for the future. *Id.* (641).

PEDDLER CARS.

Charges and tariff rule governing movement of meat in peddler cars, l. c. l., from Chicago, Ill., to certain points in Indiana and Ohio, found unreasonable to extent they exceeded charges at c. l. rates applicable to dressed beef, minimum 20,000 pounds, in effect from Chicago to farthest destination of any consignment in each car. Reparation awarded. *Wilson & Co. (Inc.) v. C., C., C. & St. L. Ry. Co.* 153.

PERCENTAGE RATES.

Rate on scrap iron from Elizabethport and Bayway, N. J., to Sharon, Pa., a point in the 67 per cent group, not shown unreasonable as compared with rate in effect to Pittsburgh, Pa. *Kaufman & Sons Co. v. C. R. R. Co. of N. J.* 521.

PICK-UP AND DELIVERY SERVICE.

Failure of defendants to accord certain complainants free collection and delivery service on interstate express shipments performed for other shippers in their vicinity in Newark, N. J., results in undue prejudice to such complainants and the locality in which their plants are situated. *Butterworth-Judson Corp. v. Adams Express Co.* 386 (389).

Free collection and delivery can not always be demanded as a matter of right, and express companies may be justified in refusing to offer it where the points to be served are not readily accessible or are too far removed from the depots, or where the traffic is insufficient to meet the expense incurred or is of such a nature as to preclude its movement by express. *Id.* (388).

PILFERAGE.

Testified that lead seals afford no protection against pilferage because they can be split easily from the side, removed from the cords and, after the box has been opened can be replaced without possibility of detection. *Reed Tobacco Co. v. C. & O. Ry. Co.* 201 (202).

Losses by pilferage in certain kinds of traffic must necessarily find expression in the rates and in the conditions prescribed under which such commodities will be accepted for transportation. *Id.* (202).

PLEADING AND PRACTICE.

Inasmuch as no order issued, contention that petition for rehearing filed too late, under rule XV of Rules of Practice, is not well founded. *Lamb-Fish Lumber Co. v. Y. & M. V. R. R. Co.* 6 (7).

Carrier and city, in consideration of grant of certain privileges by city to carrier, contracted for maintenance of a definite rate on freight moving interstate. Carrier afterwards established a higher rate in manner provided by the Act. *Held:* Commission not authorized, in testing the reasonableness of the increased rate to apply considerations other than those which would be generally applicable in any other case. *Cape Girardeau Commercial Club v. I. C. R. R. Co.* 105 (106, 107).

Facts on four out of seven shipments were stipulated and as no evidence was introduced in connection with three remaining shipments, they were not considered. *Felder v. S. Ry. Co.* 124 (125).

Defendant express companies have been merged into one operating company since record in this proceeding was closed, and as defendant company herein is not a party to the proceeding, an order directing the removal of the undue prejudice to which certain of the complainants have been found to be subject can not be entered upon the present pleadings. *Butterworth-Judson Corp. v. Adams Express Co.* 386 (389).

POINTS OFF LINE.

It was well settled, prior to federal control, that a carrier was not justified in attempting to restrict its traffic to movement between points on its own line. *Kaw River Sand & Gravel Co. v. A., T. & S. F. Ry. Co.* 350 (354).

Power of Congress and of the Commission to prevent interstate carriers from practicing discrimination against a particular locality, is not confined to those whose rails enter it. *Metropolis Commercial Club v. I. C. R. R. Co.* 376 (382).

POTENTIAL COMPETITION. *See* COMPETITION (POTENTIAL).

POWER OF COMMISSION. *See* JURISDICTION.

PREFERENCES AND PREJUDICES. *See also* DISCRIMINATION.

In General: A state of facts which would show an undue or unreasonable prejudice or disadvantage under section 3 of the act might also constitute an unjust discrimination and therefore be a violation of section 2 of the act. *Pacific Lumber Co. v. N. W. P. R. R. Co.* 738 (760).

Articles:

Annealing boxes: Fifth-class rate on wrought-iron annealing boxes from Allegheny, Pa., to Weirton, W. Va., found unreasonable and unduly prejudicial to extent it exceeded lower commodity rate maintained on cast-iron annealing boxes. Reparation awarded. *Independent Bridge Co. v. P. R. R. Co.* 525.

Cake ornaments: Double first-class rate on cake ornaments from New York N. Y., to San Francisco, Calif., not shown unreasonable, or unduly prejudicial, as compared with first-class rate applicable to notions, n. o. i. b. n., in barrels or boxes. *Getz & Co. v. A., T. & S. F. Ry. Co.* 454.

PREFERENCES AND PREJUDICES—Continued.

Articles—Continued.

Safes: Rate legally applicable on hollow-wall steel safes, with safe interiors, l. c. l., from Marietta, Ohio, to San Francisco, Calif., not shown unreasonable or unduly prejudicial as compared with rates on steel vault furniture and fittings, including iron safes. *Rucker-Fuller Desk Co. v. S. P. Co.* 561.

Shooks, box: Rate legally applicable on pine box shooks from Spokane, Wash., to Pitman, Kans., not shown unduly prejudicial, but found unreasonable as compared with rates on sash and doors to Pitman and on shooks, sash, and doors to other Kansas points. Reparation awarded. *Western Pine Mfg. Co. v. M. V. R. R. Co.* 581.

Transfers, street railway: First-class rating on, in l. c. l., from Philadelphia, Pa., to Memphis, Tenn., found legally applicable and not unreasonable or prejudicial as compared with ratings on register or sales checks or tickets and on other printed matter. *Memphis Freight Bureau v. C. & O. Ry. Co.* 731.

Localities:

Athens, Tenn.: On lumber from Brasfield, Ark., to Athens, Tenn., via Memphis, combination commodity rates assessed. Lower class M distance rate in effect from Memphis, but tariff provided for their use only when no specific rates published. *Held:* Charges assessed legally applicable and not shown unreasonable or unduly prejudicial as compared with rates from Memphis and between other points for similar and greater distances. *Brown & Sons Lumber Co. v. C., R. I. & P. Ry. Co.* 549.

Berkeley Springs, W. Va.: Failure of defendant to provide or make allowances for inside door protection on shipments of glass sand, in bulk, from Berkeley Springs, W. Va., to points in official classification territory found not unreasonable or unduly prejudicial of producers of glass sand at points in c. f. a. territory. *Morgan County Sand Producers' Asso. v. B. & O. R. R. Co.* 475.

Birmingham, Ala.: Rates on cottonseed hull shavings from Birmingham, Ala., to Hopewell, Va., now shown preferential of Memphis, Tenn., and other points, from which rates to Hopewell are the same as to the Virginia cities. *Farmers & Ginners Cotton Oil Co. v. A. G. S. R. R. Co.* 593.

Blissville, Ark.: Rates on hardwood lumber from Blissville, Ark., to points in Missouri, Kansas, Nebraska, Iowa, and Colorado not shown unreasonable, but found unduly prejudicial of Blissville and preferential of Dermott, Ark. *Bliss Cook Oak Co. v. M. P. R. R. Co.* 734.

Boise Valley, Idaho: Rates on fruit from certain points on the line of the Boise Valley Traction Co. to defined territories, Colorado common points and east, found unduly prejudicial to extent they exceeded the blanket rates from Boise, Idaho, via the Oregon Short Line Railroad. *Hurst v. B. V. T. Co.* 697 (702).

Eddyville, Ky.: Rates on cotton piece goods, any quantity, from Danville, Va., to Eddyville, Ky., not shown unreasonable or unduly prejudicial, except rate applicable prior to June 29, 1916, was unreasonable to extent that it exceeded the aggregate of rates in effect to and from Paducah, Ky. Reparation awarded. *Reliance Mfg. Co. v. I. C. R. R. Co.* 607 (611).

Elizabethport, N. J.: Undue prejudice alleged to exist in the maintenance of rates on spent iron mass (spent oxide) from certain points in Massachusetts to Elizabethport, N. J., higher than to Philadelphia, has been removed and complainant not shown to have been damaged by the undue prejudice alleged. *Herrmann & Co. v. N. Y., N. H. & H. R. R. Co.* 118.

PREFERENCES AND PREJUDICES—Continued.

Localities—Continued.

- Elk River, Idaho: Rates on lumber from Elk River, Idaho, to Bonfield and certain other points in Illinois not shown unreasonable or unduly prejudicial to Elk River as compared with lower rates from competing lumber-producing points southwest and southeast of Illinois. *Potlatch Lumber Co. v. C., M. & St. P. Ry. Co.* 31.
- Empress Mine, Wash.: Maintenance by the O.-W. R. R. & Nav. Co. of main-line rates from Tono, Wash., on its own branch line, while failing to join with the Eastern Railway & Lumber Co. in the maintenance of such rate from Empress Mine, did not constitute undue prejudice. *Empress Coal Co. v. O.-W. R. R. & N. Co.* 345 (349).
- Hancock, W. Va.: Rates on glass sand from, to four points easterly of Pittsburgh, Pa., found unduly prejudicial in violation of the federal control act and the act to regulate commerce to extent that they exceed rates maintained to Pittsburgh. *American Window Glass Co. v. W. M. Ry. Co.* 704 (711).
- Harold and Pikeville, Ky.; Complainant not found to have been damaged by the maintenance of a lower rate from Elkhorn and Beaver Valley branch of the Big Sandy division of the C. & O. Ry. to Newport News, Va., on coal for transshipment by water to points outside the Virginia capes than was maintained from Harold and Pikeville, Ky. *Darby Coal Sales Co. v. C. & O. Ry. Co.* 370.
- Helen, Ga.: Rates on lumber from Helen, Ga., to points in trunk-line and New England territories not shown unduly prejudicial, except rates on lumber other than hemlock and spruce to the Virginia cities were unduly prejudicial to extent they exceeded by more than 3 cents the rates from Murphy, N. C., etc. *Byrd-Matthews Lumber Co. v. G. & N. W. R. R. Co.* 456 (458).
- Holt, Ala.: Commodity rate on cast-iron pipe from Holt, Ala., to Seattle, Wash., not shown unreasonable but found unduly prejudicial to Holt as compared with rates from Bessemer, Anniston, and Birmingham, Ala. Reparation denied. *Central Foundry Co. v. L. & N. R. R. Co.* 101.
- Houston, Tex.: Alleged discrimination in rates on sugar and green coffee from New Orleans, La., to Houston, Tex., as compared with rates from same points of origin to Galveston, Tex., has been removed and no finding made. *Chamber of Commerce, Houston, Tex., v. M., L. & T. R. R. & S. S. Co.* 653 (655).
- Humbolt Bay points. Rates on lumber and other forest products from certain points on the Northwestern Pacific R. R. north of Willits, Calif., to points in eastern defined territories, Colorado common points and east, found unduly prejudicial to extent they exceeded rates from California coast group points. *Pacific Lumber Co. v. N. W. P. R. R. Co.* 738 (760, 764).
- Jennie, Ark.: Rates on hardwood lumber from Jennie, Ark., to Thebes, Ill., and points beyond in c. f. a. territory found unduly prejudicial to Jennie to the extent that they exceed rates maintained from Dermott and Blissville, Ark. *Jones & Dunn v. St. L., I. M. & S. Ry. Co.* 339.
- Kane, Pa.: Combination rail-and-water rates on brush blocks, l. c. l., from Kane, Pa., to Boston, Mass., through Baltimore, Md., found legally applicable and not shown unduly prejudicial as compared with joint rail-and-water rates via Philadelphia, Pa., and from farther distant points via same route. *Holgate Bros. Co. v. P. R. R. Co.* 515.

PREFERENCES AND PREJUDICES—Continued.

Localities—Continued.

- La Crosse, Wis.: Fifth-class rate on cereal beverages, carbonated, nonalcoholic, from La Crosse, Wis., to Sioux Falls, S. Dak., not shown unreasonable, but found unduly prejudicial to La Crosse as compared with commodity rates from Milwaukee, Wis., and St. Louis, Mo. Reparation denied. *Michel Brewing Co. v. C., M. & St. P. Ry. Co.* 103.
- Liberal, Mo.: Rate charged on coal from Liberal, Mo., to Burlington, Kans., found unreasonable and unduly prejudicial to Liberal to extent it exceeded rate applicable from mines in the Pittsburg-Oherokee group. Reparation awarded. *Midland Coal Co. v. St. L. & S. F. R. R. Co.* 313.
- Mayfield, Ky.: Rates on cotton factory products from points in Carolina, southeastern, and interior Mississippi Valley territories to Mayfield, Ky., not shown unreasonable but found unduly prejudicial to extent they exceed by more than 18 cents the rates to Paducah. *Mayfield & Graves County Commercial Club v. A. & V. Ry. Co.* 326 (329).
- Metropolis, Ill.: Rates on logs, lumber, and various lumber commodities from producing points in Louisiana, Arkansas, Texas, and Oklahoma to Metropolis, Ill., found unreasonable and unduly prejudicial to extent they exceeded by more than 1 cent the rates maintained to Cairo, Ill., prior and subsequent to effective date of Director General's order. Reparation awarded. *Metropolis Commercial Club v. I. C. R. R. Co.* 376 (384).
- Muskogee, Okla.: Rates on eggs and live poultry from Muskogee, Okla., to Chicago, Ill., St. Louis, Mo., and certain other points found unduly prejudicial to Muskogee as compared with rates on like traffic from Fayetteville, Ark., and other points to the same destinations. Reparation denied. *Russian Poultry & Egg Co. v. St. L. & S. F. R. R. Co.* 108.
- Rice, Minn.: Rates on potatoes from, to points in c. f. a. territory found unduly prejudicial to extent they exceeded rates maintained from points in the so-called Princeton group by more than 2 cents. *Rice Potato Co. v. B. & O. R. R. Co.* 364 (368).
- St. Matthews, Ky.: Rates on potatoes and onions, from St. Matthews, Lyndon, O'Bannon, and Glenarm, Ky., to New Orleans, La., and Meridian, Miss., etc., not shown unjustly discriminatory in that they exceed rates on like traffic to the same destinations from Louisville, Ky., etc. *St. Matthews Produce Exchange v. L. & N. R. R. Co.* 155.
- Springfield, Minn.: Allegation that rates on flour and flour-mill products of all kinds, including feed, from, to various destinations result in undue prejudice to Springfield, in favor of New Ulm, Waseca, Winona, Sanborn, Mankato, and Janesville, Minn., not sustained upon the evidence. *Springfield Milling Co. v. C. & N. W. Ry. Co.* 216.
- Torrington, Wyo.: Rates on cattle, sheep, and hogs, from Torrington, Wyo., to Omaha, Nebr., found unduly prejudicial in favor of Henry, Nebr., and should not exceed rates from Henry to Omaha by more than 2 cents. *Town of Torrington v. C., B. & Q. R. R. Co.* 414 (417).
- Turner, Kan.: Maintenance of a basis of charges from sand-producing points at which complainant's competitors are located, within or adjacent to the Kansas City switching district, to points on defendants' lines within 150 miles from Kansas City, lower than from Turner, Kans., unduly prejudices complainant and unduly prefers its competitors. *Kaw River Sand & Material Co. v. A., T. & S. F. Ry. Co.* 350 (355).
- Waco, Tex.: Contended by complainant and conceded by defendants that the rate relationship on glass bottles and fruit jars from certain Oklahoma points to Waco, Texas, is unduly preferential of Fort Worth and Dallas and prejudicial to Waco, but no finding made. *Waco Chamber of Commerce v. A., T. & S. F. Ry. Co.* 668 (669).

PREFERENCES AND PREJUDICES—Continued.**Localities—Continued.**

Walsenburg district, Colo.: Rates on pea and slack coal from, to points on the A., T. & S. F. Ry. in Kansas not shown unduly prejudicial compared with relationship between rates on slack and nut coal from the Trinidad and Canon City districts. *Alliance Coal & Coke Co. v. C. & S. Ry. Co.* 392 (394).

West, N. C.: Joint class P rate on lumber from West, N. C., to Richmond, Va., and various points in trunk-line territory which exceeded combination rates to and from Warsaw, N. C., the junction point, found unreasonable and unduly prejudicial to extent they exceeded rates one-half cent higher than rate from the junction point in effect prior to June 25, 1918. *Loyd v. A. & C. R. R. Co.* 121 (123).

Willamette Valley, Oregon: Rates on lumber and forest products from certain points in, to various points in northern states and Canada, found relatively unreasonable and prejudicial to extent they exceed rates maintained from the coast group, including Portland, Oreg., to same destinations. *Willamette Valley Lumbermen's Asso. v. S. P. Co.* 250 (254, 261, 262).

Persons:

Allegations of unreasonableness and undue preference in the distribution of defendant's logging cars on its Superior division during times of car shortage, in favor of its competitors, not sustained. *Diamond Lumber Co. v. C., M. & St. P. Ry. Co.* 78 (83).

Switching charges at Fort Worth, Tex., on cotton from various points in Texas, there compressed and subsequently reshipped to certain interstate and foreign destinations, not shown unreasonable or unduly prejudicial as compared with switching charges absorbed at Dallas, Tex., and subsequently absorbed at Fort Worth. *Bath & Co. v. Ft. W. & R. G. Ry. Co.* 129.

Defendant's charges for switching cars to and from the point of connection between its line and complainant's at Bellewood, Ill., higher than exacted from carriers other than the complainant, not found to be unreasonable or unduly prejudicial under the circumstances. *Aurora, Elgin & Chicago, R. R. Co. v. I. H. B. R. R. Co.* 331 (333).

Defendants, by maintaining a basis of charges from complainants plant at Turner, Kans., on shipments of sand to points on lines other than the Santa Fe, higher than they maintain on shipments from that plant to points on the Santa Fe, unduly and unreasonably prejudice complainant. *Kaw River Sand & Material Co. v. A., T. & S. F. Ry. Co.* 350 (355).

Failure of defendants to accord certain complainants free collection and delivery service on interstate express shipments performed for other shippers in their vicinity in Newark, N. J., results in undue prejudice to such complainants and the locality in which their plants are situated. *Butterworth-Judson Corp. v. Adams Express Co.* 386 (389).

Car-detention charges at Harlem River, New York, N. Y., on shipments of potatoes from certain points in Maine on the Bangor & Aroostook R. R., not shown unreasonable but found unduly prejudicial to complainants in favor of competitors who received shipments from points in Maine on the B. & M. and Maine Central. Reparation awarded. *New York & New Jersey Produce Co. v. N. Y., N. H. & H. R. R. Co.* 399.

Contention that defendant failed to supply sufficient cars to transport lumber from Autaugaville, Ala., and that it unduly preferred complainants' competitors, not sustained. Damages denied and complaint dismissed. *Oden-Elliott Lumber Co. v. A. C. Ry.* 403 (409, 411).

PREFERENCES AND PREJUDICES—Continued.

Persons—Continued.

Finding in 38 I. C. C., 510, that the Muncie & Western R. R. is a common carrier and refusal of trunk lines serving Muncie to absorb its switching charges to and from Ball Bros. Glass Works, and Gill Bros. clay pot works while absorbing such charges of the Muncie Belt and the Lake Erie Belt to and from the same industries is unduly prejudicial adhered to. Reparation denied. *Ball Bros. Glass Mfg. Co. v. C., C., C. & St. L. Ry. Co.* 418 (422).

Charges of the O.-W. R. R. & Nav. Co. for switching coal and wood from interchange tracks near Lee Street to complainant's place of business in East Spokane, Wash., not shown unreasonable or unduly prejudicial to complainant as compared with charges for switching from interchange tracks of the N. P. Ry. *Yeakel Fuel Co. v. O. W. R. R. & Nav. Co.* 449.

Refusal of the S. P. Co. having line haul to absorb switching charges on noncompetitive carload traffic from and to complainant's plant on a track connecting with the terminals of the A., T. & S. F. Ry. in San Francisco, while absorbing such charges of a competitor on a track connecting with a belt line owned and operated by the state of California, found to subject complainant to undue prejudice. *California Canneries Co. v. S. P. Co.* 500 (503).

Refusal of defendants to compensate complainant for the expense of interchange switching of cars to and from its plant at Sharon, Pa., while performing such services without additional charge for other foundries, found to subject complainant to undue prejudice. *National Malleable Castings Co. v. P. & L. E. R. R. Co.* 537 (543).

Increased rates resulting from refusal of defendants to compensate complainant for expense of spotting cars moving interstate to and from its plant at Farrell, Pa., while performing a like service, without charge, for competitors similarly situated, found to subject complainant to undue prejudice and disadvantage, Reparation awarded. *Sharon Steel Hoop Co. v. P. Co.* 545.

Rules under which carriers refuse to accept orders for cars for the carriage of lumber, of cubical capacity of less than 2,400 cubic feet, or of more than certain specified cubic capacity, while tariffs named graduated minima for cars of less or greater capacity when tendered for carriers' convenience. *Held:* Unreasonable and unduly prejudicial. *Feltus Lumber Co. v. G. N. Ry. Co.* 571 (576).

Switching:

Charges on dressed beef from various points to Boston, Mass., there stored and subsequently exported to France found unduly prejudicial to traffic moving from the storage warehouse to the docks of the Boston & Albany at East Boston to the preference of similar traffic stored and subsequently forwarded to the docks of the Boston & Maine. *Armour & Co. v. B. & A. R. R. Co.* 244 (247).

"PREMISES."

By established usage, with reference to property, the word "premises" contemplates real estate and its appurtenances, and it is clear that it would not include such ambulatory personalty as a railroad car. *Dow Chemical Co. v. P. M. R. R. Co.* 1 (2).

Tracks constructed by defendants within plant enclosures for exclusive use of complainant, while remaining the property of defendant, in no proper sense can be regarded as its "premises." *Id.* (2).

PRESIDENT.

The law required that the Commission in determining questions concerning rates initiated by the President shall take into consideration the fact that the defendant carriers are being operated as a unified and coordinated national system and not in competition. *Willamette Valley Lumbermen's Assn. v. S. P. Co.* 250 (258).

PRICE. *See also* **VALUE; VALUE OF COMMODITY.**

Condensed milk is sold at a uniform price per can without regard to the point from which shipped or the freight rate to destination. *Helvetia Milk Condensing Co. v. A. & V. Ry. Co.* 624.

Carriers urge where a rate in effect for a long period is condemned and a lower one substituted for the future, reparation should not be awarded where it can be shown that although the parties paid and bore the charges, as such, the rate then in effect was taken into account in fixing price of the goods, *Held:* This contention rejected in other cases, and matter dealt with only as between parties to the transportation. *Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co.* 635 (641).

PRIVATE TRACKS.

On benzol, oil, sulphuric acid, charcoal, and chloride of sulphur, delivered to interchange siding at Midland, Mich., complainant moved shipments to points within its plant enclosure and held cars in excess of free time upon tracks constructed for use of complainant only. *Held:* Storage charges not legally applicable and refund directed. *Dow Chemical Co. v. P. M. R. R. Co.* 1.

Tracks constructed by defendants within plant enclosure for exclusive use of complainant, while remaining the property of defendant, in no proper sense can be regarded as its "premises." *Id.* (2).

PROFIT.

Reparation claimed for damages resulting from loss of profit where shipper holding certain timber deeds was obliged to dispose thereof, due to alleged failure of carriers to furnish cars, denied. *Oden-Elliott Lumber Co. v. A. C. Ry.* 403 (409).

PROOF. *See* **BURDEN OF PROOF.****PROPORTIONAL RATES.**

Boat lines which bring logs to the ports are not subject to the act to regulate commerce and have no tariffs on file with the Commission, and rates shown from the ports are not, properly speaking, proportional rates. *Pacific Lumber Co. v. N. W. P. R. R. Co.* 738 (746).

RAIL-AND-WATER. *See also* **WATER AND RAIL.**

Combination rail-and-water rates charged on brush blocks, l. c. l., from Kane, Pa., to Boston, Mass., through Baltimore, Md., found legally applicable and not shown unreasonable or unduly prejudicial as compared with joint rail-and-water rates in effect via Philadelphia, Pa., and from farther distant points. *Holgate Bros. Co. v. P. R. R. Co.* 515.

RATE COMPARISONS. *See also* **COMPARATIVE RATES; RELATIVE RATES.**

Rates introduced for comparison by defendants to prove the reasonableness of rates assailed indicate that the rates assailed are unreasonable. *Independent Cooperative Lumber Co. v. L. W. R. R. Co.* 557 (558).

RATE MAKING. *See also* **FIXING RATES.**

Carriers are required by law to initiate and establish their rates, and they must of necessity, acting within human limitations, exercise their judgment in the first instance just as the Commission does upon complaint and investigation in the second instance. *Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co.* 635 (641).

REASONABLENESS OF RATES. *See* **MEASURE OF RATES.****RECONSIDERATION.** *See* **SUPPLEMENTAL REPORT; REHEARING.**

RECONSIGNMENT. *See also* DIVERSION.

On gum lumber from Helena, Ark., to Buffalo, N. Y., reconsignment to Medina, N. Y., refused because of alleged embargoes. Shipment held at Buffalo and subsequently moved under new bill of lading to Medina, *Held*: As no embargoes existed against Buffalo or Medina transportation and demurrage charges were illegal. Reparation awarded. *Nichols & Cox Lumber Co. v. N. Y. C. R. R. Co.* 174.

Where carriers hold themselves out to perform a reconsignment service after shipment is accepted for transportation at point of origin, the fact that reconsignment is refused and shipment is forwarded to destination from reconsigning point on new bill of lading, does not change its essential character as a through shipment. *Nichols & Cox Lumber Co. v. N. Y. C. R. R. Co.* 174 (176). *Brabston v. C. of G. Ry. Co.* 459 (460, 461).

Lumber billed from points in Louisiana to Herrick, Ill., held at Ramsey, Ill., where they were ordered reconsigned to Toronto, Canada. Because of embargo, reconsignment refused and demurrage accrued. Inasmuch as tariffs made no provision for such charges, *Held*: Demurrage unreasonable and illegal. Reparation awarded. *Higgins Lumber & Export Co. v. N. O. G. N. R. R. Co.* 214.

Alleging unreasonable charges on a carload of coal from Lilly, Pa., consigned to Elm Grove, Wis., subsequently reconsigned to North Milwaukee, Wis., due to failure of defendants to hold at Ludington, Mich. *Held*: Defendants acted within their rights in refusing to hold and divert at the request of a stranger to transportation record and charges were legally assessed. *Callaway Fuel Co. v. C., M. & St. P. Ry. Co.* 227.

Through rate on bulk-shelled corn from Rushville, Ind., to Pocahontas, Va., and reconsigned to Baltimore, Md., for export, found unreasonable due to component from Pocahontas to Baltimore. Reparation awarded. *Cincinnati Grain & Hay Co. v. P., C., C. & St. L. R. R. Co.* 248.

On lumber from Pineville, La., to Suffern, N. Y., complainant requested reconsignment at Cincinnati, Ohio. Shipment moved via Potomac Yards, Va., and instructions could not be complied with. Arrived at Lackawaxen, Pa., thence reconsigned to Suffern, *Held*: Inasmuch as same rate applied, movement via either route complied with routing instructions. Shipment not misrouted but found overcharged. *Beekman Lumber Co. v. L. Ry. & Nav. Co.* 451.

Complainant requested reconsignment to Greencastle, Pa., of a c. l. of lumber billed from Alexander City, Ala., to Roanoke, Va., while in transit. Carrier declined because of embargo. Arrived at Roanoke, there stored and subsequently forwarded under new bill of lading. Tariff naming joint rate contained no inhibition against reconsignment to embargoed points. *Held*: Charges illegal to extent they exceeded joint rate. Reparation awarded. *Brabston v. C. of G. Ry. Co.* 459.

Assessment of reconsignment charges on shipments of hay from certain interstate points to Townley, N. J., reconsigned to points in New York Harbor, while no charge was made for the same service at Jersey City, N. J., found unreasonable. Reparation awarded. *Schaefer & Son v. L. V. R. R. Co.* 596.

REDUCTION IN RATES.

In general: The fact that other points would seek reduction in their present rates if the rates asked to Metropolis are prescribed affords no basis for denying relief to Metropolis if the present rates to that point are unlawful. *Metropolis Commercial Club v. I. C. R. R. Co.* 376 (383).

By Carriers:

Charges on sulphuric acid in tank cars from producing points in the southeast to Emporium, Sinnemahoning, Mount Union, and Oakdale, Pa., exceeded rates subsequently established. Reparation awarded. *Aetna Explosives Co. v. A. G. S. R. R. Co.* 11.

REDUCTION IN RATES—Continued.

By carriers—Continued.

Class rates on potatoes from certain points in Iowa to Pittsburgh, Scranton, and Wilkes-Barre, Pa., exceeded subsequently established commodity rates. Reparation awarded. *Loveland & Hinyan Co. v. D. & H. Co.* 15.

Rate on celery from Antioch, Calif., to Portland, Oreg., found justified as compared with lower rate via another route, which rate was subsequently established via route of movement, but 24,000 pound minimum held unreasonable to extent it exceeded 20,000 pounds. *Martin Brokerage Co. v. S. P. Co.* 91.

Rate on sulphate of potash from Seattle, Wash., to East St. Louis, Ill., exceeded rate subsequently established. Reparation awarded. *Swift & Co. v. G. N. Ry. Co.* 115.

Sixth-class rate legally applicable on spent iron mass (spent oxide) from Cambridge, Mass., to Elizabethport, N. J., exceeded commodity rate subsequently established. *Herrmann & Co. v. N. Y., N. H. & H. R. R. Co.* 118.

First-class rate on saws from San Francisco, Calif., to Chicago, Ill., exceeded lower commodity rate applicable in the opposite direction and subsequently established over the route of movement. Reparation awarded. *Simonds Manufacturing Co. v. A., T. & S. F. Ry. Co.* 131.

Rate on fuel oil in tank-car loads from Okmulgee, Okla., to Kenedy, Tex., exceeded lower commodity rate from other points in the Oklahoma oil-producing group, which lower rate was subsequently established from Okmulgee via route of movement. Reparation awarded. *Empire Refineries (Inc.) v. St. L.-S. F. Ry. Co.* 151.

Rate on distiller's dried grain from Louisville, Ky., to Alexandria, Va., not shown unreasonable inasmuch as neither the fact that the rate by way of the Southern as initial carrier was higher than applied over other routes nor the subsequent establishment of lower rates in connection with the Southern as initial carrier is sufficient to condemn the rate assailed. *Dewey Bros. v. S. Ry. Co.* 160.

First-class rate legally applicable on rubber glass from Ashland, Mass., to Miami, Ariz., exceeded third-class combination rate subsequently established. Reparation awarded. *American Bridge Co. v. N. Y., N. H. & H. R. R. Co.* 181.

Sixth-class rates on dolomite from Natural Bridge and Benson Mines, N. Y., to Vandergrift, Pa., exceeded rate in effect to Pittsburgh, Pa., which rate was subsequently established to Vandergrift. Reparation awarded. *American Sheet & Tin Plate Co. v. N. Y. C. R. R. Co.* 187.

Fifth-class rate legally applicable on red oil from Syracuse, N. Y., to Lodi and Hawthorne, N. J., not shown unreasonable as compared with lower commodity rate in effect via another route and subsequently established via route of movement. *Syracuse Chamber of Commerce v. N. Y. C. R. R. Co.* 197.

Second-class rate on mustard-seed oil from San Francisco, Calif., to Chicago, Ill., exceeded lower commodity rate subsequently established. Reparation awarded. *Friedman Mfg. Co. v. W. P. R. R. Co.* 225.

Rates on toluol in tank-car loads from Milwaukee, Wis., and certain other eastern points to Hercules, Calif., exceeded lower commodity rates subsequently established. Reparation awarded. *Hercules Powder Co. v. C. G. W. R. R. Co.* 229.

Fifth-class rate on sulphate of potash, from Marysvale, Utah, to New Orleans, La., for export, exceeded lower commodity rate subsequently established. Reparation awarded. *Armour & Co. v. D. & R. G. R. R. Co.* 233.

REDUCTION IN RATES—Continued.

By carriers—Continued.

First-class rate on uncompressed cotton in bales from New Orleans, La., to Sweetwater, Tenn., exceeded lower commodity rate subsequently established. Reparation awarded. *Smith Cotton Products Co. v. L. & N. R. R. Co.* 311.

Upon rehearing shipments of apples from Eugene, Mo., to Kansas City, Mo., back hauled from Kansas City, Kans., found to have consisted of cull or windfall apples, and fifth-class rate assessed found unreasonable to extent it exceeded lower distance rate subsequently established. Reparation awarded. *Cardwell v. C., R. I. & P. Ry. Co.* 390 (391).

Third-class rates on steel lubricating or grease cups, l. c. l., from Battle Creek, Mich., and certain other points, to Stockton, Calif., exceeded lower commodity rates subsequently established. Reparation awarded. *Holt Mfg. Co. (Inc.) v. S. P. Co.* 397.

Fifth-class rate legally applicable on iron or steel forms or molds for concrete construction, from Canton and Martin's Ferry, Ohio, to San Francisco, Calif., exceeded lower commodity rate subsequently established. Reparation awarded. *Concrete Engineering Co. v. P. Co.* 423.

Rates on wet nitrocellulose from Hopewell, Va., to Lake Junction, Iowa, found unreasonable to extent they exceeded lower commodity rate to Haskell, N. J., a point in the same general territory, which lower rate was subsequently established to Lake Junction. Reparation awarded. *Hercules Powder Co. v. N. & W. Ry. Co.* 427.

Class rates on crushed stone from Louisville, Nebr., to Northboro and Macedonia, Iowa, exceeded lower rates subsequently established. Reparation awarded. *National Supply Co. v. C., B. & Q. R. R. Co.* 429.

Reparation awarded on condensed milk in milk shipping cans, from Webberville, Mich., and Washington, D. C., to Jacksonville, Fla., and from Jacksonville to Richmond, Va., on basis of rates subsequently established. *Chapin-Sacks Mfg. Co. v. P. M. R. R. Co.* 443 (446).

Commodity rate legally applicable on wire rods in coils, from Atlanta, Ga., to Baltimore, Md., exceeded the rate in effect on steel billets, which lower rate was subsequently made applicable to wire rods. Reparation awarded. *American Steel Export Co. v. S. Ry. Co.* 527.

Rates on sulphuric acid, in tank-car loads, from Shreveport, La., to Ensley, Ala., exceeded lower rates subsequently established. Reparation awarded. *Virginia-Carolina Chemical Co. v. A. & V. Ry. Co.* 617.

Fifth-class rate on nitrate of soda from Port Richmond, Pa., to Gibbstown, N. J., exceeded lower rate subsequently established. Reparation awarded. *Du Pont de Nemours & Co. v. P. & R. Ry. Co.* 671.

In 44 I. C. C., 660, rates on cotton seed from Florida, to Bainbridge, Ga., found unreasonable to extent components to River Junction, Fla., exceeded rates in effect prior to movement and subsequently established. Upon rehearing, rates legally applicable found unreasonable to same extent, and that the component from River Junction to Bainbridge, exceeded the class M rate. Reparation awarded. *Bainbridge Oil Co. v. M. & B. R. R. Co.* 9.

By Commission:

Rates on common window glass from Okmulgee, Okla., to Waco, Tex., found unreasonable as compared with rates from Kansas and other glass producing points. Rates not in excess of rates from Okmulgee and Sapulpa to Dallas, Fort Worth and other intermediate points prescribed and reparation awarded. *Cameron & Co. v. A., T. & S. F. Ry. Co.* 18.

REDUCTION IN RATES—Continued.*By Commission—Continued.*

Rates legally applicable on sulphuric acid from Copperhill, Tenn., to Gibbstown and Carney's Point, N. J., exceeded the rates maintained to New York, N. Y., and other points located in the New York rate group. Reparation awarded and rates prescribed. *Du Pont de Nemours Powder Co. v. L. & N. R. R. Co.* 589.

REFRIGERATION.

Upon rehearing, class rates in official classification territory of dressed poultry, butter, eggs, and cheese, in any quantity, found to have been sufficiently high to include refrigeration, during period in question, when an extra charge was made. Finding in original report, 43 I. C. C., 392, reversed. Reparation denied. *National Poultry, Butter & Egg Asso. v. B. & O. S. W. R. R. Co.* 34 (50).

On c.l. of peaches from Jacksonville, Tex., to El Paso, Tex., where 200 crates added and shipment forwarded under new bill of lading to Globe, Ariz., refrigeration charges for movement, El Paso to Globe, not shown unreasonable. *Loretz, Pegram & Co. v. S. P. Co.* 158.

Carriers are entitled, in addition to the actual cost of the ice furnished, to compensation for haulage, cost of supervision, repairs to bunkers and extra switching, and to an allowance for depreciation of cars, damage claims, and profit. *Id.* (159, 160).

REFRIGERATOR CARS.

Charges of \$5 per car per trip for use of refrigerator or other insulated cars loaded with potatoes at Wisconsin points for interstate shipments found to have been legally applicable between April 15 and August 1, 1915, but not applicable between August 1 and October 15, 1915. *Starks Co. v. C. & N. W. Ry. Co.* 335 (338).

REFUND. See also OVERCHARGES.

Claim for refund of freight charges collected on shipment made to replace one damaged in transit held to be a matter for adjustment as an integral part of claim for property damage. *Fords Porcelain Works v. L. V. R. R. Co.* 485.

REFUSED SHIPMENT.

On a shipment of oak heading, returned from Indianapolis, Ind., to Batesville, Ark., due to refusal by consignee, joint class D rate for return movement higher than commodity rate applicable in opposite direction, not shown unreasonable. *Little Rock Freight Bureau v. M. P. Ry. Co.* 23.

REHEARING. See also SUPPLEMENTAL REPORT.

In 44 I. C. C., 660, rates on cotton seed from Florida to Bainbridge, Ga., found unreasonable to extent components to River Junction, Fla., exceeded rates in effect prior to movement and subsequently established. Upon rehearing rates legally applicable found unreasonable to same extent, that the component from River Junction to Bainbridge exceeded the Class M rate. Reparation awarded. *Bainbridge Oil Co. v. M. & B. R. R. Co.* 9.

Finding in original report 42 I. C. C., 730, that movement of apples from Kansas City, Mo., to Kansas City, Kans., thence back hauled to Kansas City, Mo., in the course of transportation from Eugene, Ark., to Kansas City, Mo., was an unwarranted, uncalled for, and unnecessary service, reversed on rehearing. *Cardwell v. C., R. I. & P. Ry. Co.* 390.

Rates on cattle, sheep, and hogs, from Torrington, Wyo., to Omaha, Nebr., found unduly prejudicial in favor of Henry, Nebr. *Town of Torrington v. C., B. & Q. R. R. Co.* 414 (417).

REICING. See REFRIGERATION.**REIMBURSEMENT. See REFUND.**

RELATIONSHIP OF RATES. *See also* **RELATIVE RATES.**

Evidence insufficient to show that relationship of rates on flour and flour-mill products, from Springfield, Minn., to points in Illinois, west of De Kalb, and to points in Iowa as unjust in favor of New Ulm and other points in Minnesota. *Springfield Milling Co. v. C. & N. W. Ry. Co.* 216 (217).

Complainants not found entitled to reparation upon basis of adjustment of rates between Pacific coast territory and intermountain territory found reasonable in the *City of Spokane Case*, by reason of fact that during period in question lower rates were maintained to north Pacific coast points than to Spokane. *Adams Leather Co. v. C. P. Ry. Co.* 659 (666).

RELATIVE ADJUSTMENT. *See also* **RELATIVE RATES.**

Sixth-class rates on dolomite from Natural Bridge and Benson Mines, N. Y., to Vandergrift, Pa., exceeded rate in effect to Pittsburgh, Pa., and points taking same rates, which rate was subsequently established to Vandergrift. Reparation awarded. *American Sheet & Tin Plate Co. v. N. Y. C. R. R. Co.* 187.

Rates on lumber and forest products from certain points in the Willamette Valley in Oregon to various points in northern states and Canada, found relatively unreasonable and prejudicial to extent they exceed rates maintained from the coast group. *Willamette Valley Lumbermen's Asso. v. S. P. Co.* 250 (254, 261, 262).

Adjustment of rates to Cairo and Paducah appears to afford a proper standard whereby to measure the reasonableness of the rates to Metropolis. *Metropolis Commercial Club v. I. C. R. R. Co.* 376 (383).

The remarkable growth of the cotton-mill industry of the south is attributed largely to the relative rate adjustment with the New England mills. *Reliance Mfg. Co. v. I. C. R. R. Co.* 607 (610).

RELATIVE RATES. *See also* **PREFERENCES AND PREJUDICES.**

Ensley, Ala.: Rates on sulphuric acid, in tank-car loads, from Shreveport, La., to Ensley, Ala., found unreasonable as compared with rates from various other points to same destination. Reparation awarded. *Virginia-Carolina Chemical Co. v. A. & V. Ry. Co.* 617.

Helen, Ga.: Rates on lumber from Helen to points in trunk line and New England territories compared with rates from Memphis, Nashville, and Chattanooga, Tenn., and points in the hardwood section of Louisiana and Mississippi to various destinations. *Byrd-Matthews Lumber Co. v. G. & N. W. R. R. Co.* 456 (458).

Hopewell, Va.: Rates on wet nitrocellulose from Hopewell, Va., to Lake Junction, Iowa, exceeded lower commodity rate to Haskell, N. J., a point in the same general territory, which lower rate was subsequently established to Lake Junction. Reparation awarded. *Hercules Powder Co. v. N. & W. Ry. Co.* 427.

Houston, Tex.: Circumstances surrounding the rates on sugar from New Orleans, La., to St. Louis, McBride, and Caruthersville, Mo., Helena, Ark., Memphis and Nashville, Tenn., Louisville, Ky., and Evansville, Ind., are substantially different from those existing in connection with rates to Houston. *Chamber of Commerce, Houston, Tex., v. M. L. & T. R. R. & S. S. Co.* 653 (656).

New Glasgow, Nova Scotia: Rates legally applicable on yellow pine lumber from Georgia, Florida, and Alabama points to New Glasgow and Trenton, Nova Scotia, not shown unreasonable as compared with rates from Waycross, Ga., Marianna, Fla., and Gentilly, La., farther distant points. *Eastern Car Co. (Ltd.) v. C. G. Rys.* 627 (628).

Oklahoma points: Fifth-class rates on bagging from points in Oklahoma to points in Texas, compared with rates for greater distances from St. Louis, Mo., and Memphis, Tenn., to same destinations. *Houston Exporters Asso. v. A., T. & S. F. Ry. Co.* 509 (510).

RELATIVE RATES—Continued.

Okmulgee, Okla.: Rate on fuel oil, in tank-car loads, from Okmulgee, Okla., to Kenedy, Tex., found unreasonable to extent it exceeded lower commodity rate from other points in the Oklahoma oil-producing group, which lower rate was substantially established from Okmulgee via route of movement.

Reparation awarded. *Empire Refineries (Inc.) v. St. L.-S. F. Ry. Co.* 151.

Omaha, Nebr.: State and interstate rates on live stock to Omaha, Nebr., from pairs of stations nearest the Nebraska boundary, compared. *Town of Torrington v. C., B. & Q. R. R. Co.* 414 (416).

Paducah, Ky.: Rate on cotton mop heads, l. c. l., from Paducah, Ky., to Chicago, Ill., compared with rates to Cincinnati, Ohio, Louisville, Ky., Memphis, Tenn., St. Louis, Mo., and New Orleans, La. *Paducah Board of Trade v. I. C. R. R. Co.* 462 (463).

Pocahontas, etc., Ark.: Rate on ties from Pocahontas, Elnora, and Black Rock, Ark., to Thebes and Cairo, Ill., for beyond found unreasonable as compared with rates from Walnut Ridge, Hoxie, Nettleton, and Jonesboro, Ark. Reparation awarded. *Johnson & Son v. St. L.-S. F. Ry. Co.* 518.

Prospect Hill, Mo.: Commodity rate on gypsum rock from Fort Dodge, Iowa, to Prospect Hill, Mo., not shown unreasonable as compared with rates from Blue Rapids, Kans., and between other points for similar distances. *United States Gypsum Co. v. Ft. D., D. M. & S. R. R. Co.* 135.

Sapulpa, Okla.: Rates on empty slack barrels from Coffeyville, Kans., and Joplin, Mo., to Sapulpa, Okla., found unreasonable as compared with rates between other points. Reparation awarded. *Bartlett-Collins Glass Co. v. A., T. & S. F. Ry. Co.* 496.

Texas points: Rates on common window glass from Okmulgee, Okla., to Waco, Tex., found unreasonable as compared with rates from Kansas and other glass producing points. Rates not in excess of rates from Okmulgee and Sapulpa to Dallas, Fort Worth, and other intermediate points prescribed and reparation awarded. *Cameron & Co. v. A., T. & S. F. Ry. Co.* 18.

Tulsa, Okla.: Rate legally applicable on sweet potatoes from De Queen, Ark., to Tulsa, Okla., found unreasonable to extent it exceeded rate to Arkansas City, Caldwell, Hutchinson, and other Kansas points. Reparation awarded. *Stough v. K. C. S. Ry. Co.* 683.

Webbers Falls, Okla.: Rate on potatoes from Webbers Falls, Okla., to Shreveport, La., found unreasonable as compared with rates from Warner, Okla., to various destinations in Texas. Reparation awarded. *Fort Smith Commission Co. v. M. V. R. R. Co.* 489 (490).

Wichita, Kans.: Rates on news-print paper, to, from Chicago, Ill., and points taking same rates, and from points in Minnesota, found unreasonable as compared with rates to Kansas City. Reparation awarded. *Wichita Traffic Bureau v. A., T. & S. F. Ry. Co.* 505.

RELEASE OF CARS.

The demand for heater cars and lined cars during the season from November to April is heavy and prompt release of equipment is necessary. *New York & New Jersey Produce Co. v. N. Y., N. H. & H. R. R. Co.* 399 (400).

RELEASED RATES. *See CUMMINS AMENDMENT.*

RENTAL.

Charges of \$5 per car per trip for use of refrigerator or other insulated cars loaded with potatoes at Wisconsin points for interstate shipment found to have been legally applicable between April 15 and August 1, 1915, but not applicable between August 1 and October 15, 1915. *Starks Co. v. C. & N. W. Ry. Co.* 335 (338).

A warehouse owner is not entitled to recover damages for depreciation in the rental value of this property as a result of leases by a railroad company of similar properties at nominal rentals to shippers. *Pittwood v. N. P. Ry. Co.* 535.

REOPENING. *See* REHEARING; SUPPLEMENTAL REPORT.

REPARATION. *See* DAMAGES.

RESTORED RATES.

Fifth-class rates on gasoline and other volatile petroleum oils from Mobile, Ala., to Chattanooga and Knoxville, Tenn., and from Gretna, La., to Mobile and Gadsden, Ala., and Knoxville, exceeded commodity rates formerly in effect and subsequently reestablished via routes of movement. Reparation awarded. *Gulf Refining Co. of La. v. L. & N. R. R. Co.* 4.

On feldspar from East Point and Atlanta, Ga., to Durham and Winston-Salem, N. C., charges legally applicable not shown unreasonable as compared with abnormally low rates established by defendant for the purpose of experimenting with this commodity, which rates were removed and former rates restored due to no further movement. *Felder v. S. Ry. Co.* 124.

Combination rate on pine lumber from Coal City, Ala., to Cairo, Ill., diverted to Carpenter, Ill., and subsequently to Toledo, Ohio, exceeded lower rate formerly in effect and subsequently reestablished via route of movement. Reparation awarded. *Advance Lumber Co. v. S. A. L. Ry. Co.* 149.

RETROACTIVE.

Increase in joint rates on soft coal from mines on the Denver & Salt Lake Railroad to interstate destinations on lines of participating carriers was made to meet a defined and acute emergency and should inure to the benefit of the Denver & Salt Lake for the entire period for which the increase was allowed. *D. & S. L. R. R. Co. v. C., B. & Q. R. R. Co.* 679 (682).

RETURNED EMPTIES.

Rates on steel containers returned collapsed not shown unreasonable or otherwise in violation of the law. *Pneumatic Scales Corp. v. A. & R. R. R. Co.* 686 (696).

RETURNED SHIPMENT.

On a shipment of oak heading, returned from Indianapolis, Ind., to Batesville, Ark., due to refusal by consignee, joint class D rate for return movement higher than commodity rate applicable in opposite direction, not shown unreasonable, unjustly discriminatory or unduly prejudicial. *Little Rock Freight Bureau v. M. P. Ry. Co.* 23.

REVENUE. *See* EARNINGS.

RIGHT OF WAY.

Storage charges on staves, placed in out of way place at Andalusia, Ala., to await others sufficient to make a carload, found illegal inasmuch as they were not in transportation during the time they rested on defendant's right of way, as the staves were not received for delivery by defendant nor held by it to complete a shipment or for forwarding directions. Reparation awarded. *Moore Stave Co. v. C. of G. Ry. Co.* 170.

ROUTES.

On old rails from Pentoga, Mich., to East St. Louis, Ill., no rate or junction point inserted in bill of lading. Through rate legally applicable not shown unreasonable as compared with lower combination rate via route other than route of movement. *Zelnicker Supply Co. v. C. & N. W. Ry. Co.* 90.

The existence of a lower rate over another route and the subsequent establishment of that rate over the route of movement do not of themselves warrant a condemnation of the rate charged. *Martin Brokerage Co. v. S. P. Co.* 91 (93).

No presumption of unreasonableness attaches to a joint through rate applicable over a particular route because of the fact that the intermediate rates over another route would make a lower charge. *Id.* (91).

Rates on stock cattle from Sioux City, Iowa, to points in Kentucky not shown unreasonable as compared with combination rate from and to these same points by way of Savanna, Ill. *Jonas and Sim Weil v. C., M. & St. P. Ry. Co.* 95.

ROUTES—Continued.

Rate on lumber from New Orleans, La., to Windom, Kans., not shown unreasonable or discriminatory as compared with lower rate via other routes, inasmuch as complainant specifically routed shipment. *Ruddock Orleans Cypress Co. v. A., T. & S. F. Ry. Co.* 114.

Rate on distillers' dried grain from Louisville, Ky., to Alexandria, Va., delivered to S. Ry. as initial carrier, not shown unreasonable inasmuch as neither the fact that the rate by way of the Southern as initial carrier was higher than applied over other routes nor the subsequent establishment of lower rates in connection with the Southern as initial carrier is sufficient to condemn the rate assailed. *Dewey Bros. Co. v. S. Ry. Co.* 160.

Fifth-class rate legally applicable on red oil from Syracuse, N. Y., to Lodi and Hawthorne, N. J., not shown unreasonable as compared with lower commodity rate in effect via another route and subsequently established via route of movement. *Syracuse Chamber of Commerce v. N. Y. C. R. R. Co.* 197.

The existence of a lower rate over competing lines, and the subsequent establishment of that rate over the route of movement, do not of themselves warrant a condemnation of the rates charged. *Id.* (198).

On lumber from Pineville, La., to Suffern, N. Y., complainant requested reconsignment at Cincinnati, Ohio. Shipment moved via Potomac Yard, Va., and instructions could not be complied with. Arrived at Lackawaxen, Pa., thence reconsigned to Suffern. *Held:* Inasmuch as same rate applied, movement via either route complied with routing instruction. Shipment not misrouted but found overcharged. *Beekman Lumber Co. v. L. Ry. & Nav. Co.* 451.

Combination rate on coal from Alger, Wyo., to Central City, S. Dak., via Deadwood, S. Dak., exceeded subsequently established joint rate via Crawford, Nebr. Reparation awarded. *Savage v. C. & N. W. Ry. Co.* 482.

The fact that a lower combination can be made by way of another route would not be sufficient to justify prescribing that rate over the route of movement. *Aetna Explosives Co. v. A., T. & S. F. Ry. Co.* 513 (514).

On lumber from Arcola, Ga., to New York and Corona, N. Y., shipper specified "P. R. R. delivery." Agent billed via Richmond, Va. Lower rate in effect via Pinners Point, Va. *Held:* Shipments misrouted. Reparation awarded. *National Wholesale Lumber Dealers Asso. v. S. & S. Ry. Co.* 531.

ROUTING INSTRUCTIONS. *See also MISROUTING.*

Rate charged on lumber from New Orleans, La., to Windom, Kans., not shown unreasonable or discriminatory as compared with lower rate via other routes, inasmuch as complainant specifically routed shipment. *Ruddock Orleans Cypress Co. v. A., T. & S. F. Ry. Co.* 114.

On brush blocks, l. c. l., from Kane, Pa., to Boston, Mass., moving rail-and-water, due to embargo at Philadelphia, Pa., complainant routed shipments via Baltimore, Md. Combination rate legally applicable. Lower joint rate in effect via Philadelphia. *Held:* Inasmuch as shipments moved in compliance with complainant's routing instructions rates assessed not shown unreasonable. *Holgate Bros. Co. v. P. R. R. Co.* 515.

On high explosives from Gibbstown, N. J., to East Radford, Va., routing instructions specified lines but no junction point. Shipments forwarded via junction point taking higher rate. *Held:* Shipments misrouted. Reparation awarded. *Du Pont de Nemours & Co. v. W. J. & S. S. R. R. Co.* 553.

RULES OF PRACTICE. *See ADMINISTRATIVE RULING; PLEADING AND PRACTICE. SCRAP. See JUNK.*

SEALS.

Testified that lead seals afford no protection against pilferage because they can be split easily from the side, removed from the cords, and after the box has been opened can be replaced without possibility of detection. *Reed Tobacco Co. v. C. & O. Ry. Co.*, 201 (202).

SEASONAL TRAFFIC.

The demand for heater cars and lined cars during the season from November to April is heavy and prompt release of equipment is necessary. *New York & New Jersey Produce Co. v. N. Y., N. H. & H. R. R. Co.* 399 (400).

SECTION 2.

A state of facts which would show an undue or unreasonable prejudice or disadvantage under section 3 of the act might also constitute an unjust discrimination and therefore be a violation of section 2 of the act. *Pacific Lumber Co. v. N. W. P. R. R. Co.* 738 (760).

Purpose of section 2 of the act is to enforce equality as between shippers, and to prohibit any rebate or other device by which two shippers, shipping over the same line, the same distance, under the same circumstances of carriage, are compelled to pay different prices therefor. *Id.* (760).

Is primarily directed against discrimination between shippers located in the same community. *Id.* (760).

SECTION 3. See also PREFERENCES AND PREJUDICES.

A state of facts which would show an undue or unreasonable prejudice or disadvantage under section 3 of the act might also constitute an unjust discrimination and therefore be a violation of section 2 of the act. *Pacific Lumber Co. v. N. W. P. R. R. Co.* 738 (760).

SECTION 4. See also LONG AND SHORT HAUL; THROUGH AND LOCAL.

Passage of federal control act held not to affect provisions of section 4. *Johnston v. A., T. & S. F. Ry. Co.* 356 (361).

Contention that the removal of discrimination against Houston by increasing the rate to Galveston, originally reduced to meet actual water competition, and in effect at time complaint filed, is in contravention of section 4 dealing with the elimination of water competition by an increase in rates. *Held*, Reduced rates established prior to its enactment, and that provision of section 4 not contravened in this instance. *Chamber of Commerce, Houston, Tex. v. M. L. & T. R. R. & S. S. Co.* 653 (657).

Power of Commission to consider at this time applications for relief from provisions of the fourth section of the act to regulate commerce set forth in *Johnston Case*, 51 I. C. C., 356. *Heider Mfg. Co. v. C. G. W. R. R. Co.* 713 (718).

SECTION 5.

Ownership and operation of Detroit River car ferries, between Detroit, Mich., and Windsor, Ont., by Grand Trunk Ry. Co. of Canada. *Control of Water Carriers by Railroad Carriers*, 436.

SECTION 15. See ALLOWANCES; APPLICATION; THROUGH ROUTES AND JOINT RATES. SET UP AND KNOCKED DOWN.

A chair set up occupies the space of six chairs knocked down. *Phoenix Chair Co. v. C. & N. W. Ry. Co.* 218 (219).

SHORT LINE.

On lumber and forest products from Humbert, Pa., on the Ursina & North Fork Ry., to interstate destinations, increased rates from \$5 per car to 20 cents per ton for that portion of the haul to Ursina Junction, found justified as compared with rates from points on other short lines for similar distances. *United Lumber Co. v. U. & N. F. Ry. Co.* 199.

SPECIAL EQUIPMENT.

On horses from Pittsburgh, Pa., to Jersey City, N. J., defendant could not furnish commercial horse cars as requested. Ordinary stock cars, without stalls, were accepted. *Held*: Defendant under no legal obligation to comply with order for special equipment within short time necessary to meet complainant's requirements, and express charges legally applicable on basis of cars accepted not shown unreasonable. *Northwestern Trading Co. (Inc.) v. Adams Exp. Co.* 211.

SPECIAL EQUIPMENT—Continued.

A carrier is entitled to a reasonable time in which to furnish special equipment and unless given reasonable notice of shipper's requirements it is not liable for damages resulting from failure to furnish such equipment. *Id.* (213).

Under contract specifying termination by either party on 60 days' notice, express companies supplied baggage cars, which complainants equipped for transporting live fish. Express companies requested to return cars, whereupon agreement terminated. Prayer that defendants cease and desist from taking cars and to continue to furnish. *Held:* Issue not within Commission's jurisdiction. *Lay v. American Exp. Co.* 373.

SPOTTING CARS. See also INDUSTRIAL SWITCHING.

Increased rates resulting from refusal of defendants to compensate complainant for expense of spotting cars moving interstate to and from its plant at Farrell, Pa., while performing a like service, without charge, for competitors similarly situated, found to subject complainant to undue prejudice and disadvantage. Reparation awarded. *Sharon Steel Hoop Co. v. P. Co.* 545.

STANDARD TIME. See TIME.**STATE AND INTERSTATE.**

On a carload of peaches from Jacksonville, Tex., to El Paso, Tex., thence under new bill of lading to Globe, Ariz., *Held:* Movement to El Paso intrastate and beyond jurisdiction of Commission. *Loretz, Pegram & Co. v. S. P. Co.* 158.

Finding in original report 42 I. C. C. 730, that movement of apples from Kansas City, Mo., to Kansas City, Kans., thence back hauled to Kansas City, Mo., in the course of transportation from Eugene, Ark., to Kansas City, Mo., was an unwarranted, uncalled for, and unnecessary service, reversed on rehearing. *Cardwell v. C., R. I. & P. Ry. Co.* 390.

Carload of posts moved via interstate route from Boy River, Minn., to Minnesota, Minn. Lower rate in effect via intrastate route. *Held:* Shipment misrouted by initial carrier. Reparation awarded. *Page & Hill Co. v. C., St. P., M. & O. Ry. Co.* 487.

On high explosives from Emporium, Pa., to Thomasville, Pa., routing instructions specified "P. R. R. c/o W. M." Shipment moved via Hagerstown, Md. Lower intrastate rate applied via Hanover, Pa. *Held:* Shipment misrouted. Reparation awarded. *Aetna Explosives Co. v. P. R. R. Co.* 615.

STATE COMMISSION.

Nebraska State Railway Commission denied defendants' application for authority to increase rates to satisfy order of the Commission, and took certain exceptions to the Commission's finding and conclusions whereupon case was reopened for further hearing. *Town of Torrington v. C., B. & Q. R. R. Co.* 414.

STATE RATES.

Urged that the Iowa distance rates filed with the Commission solely for purpose of constructing rates to and from points in Iowa for which there are no other bases for making through rates; that the restrictive clause in tariffs has effect of removing those tariffs from the Commission's jurisdiction. *Held:* Contentions answered in *Herrick Refrigerator & Cold Storage Case*, 46 I. C. C. 421. *Heider Mfg. Co. v. C. G. W. R. R. Co.* 713 (718).

STATUTE.

Contended that as to any subject matter treated by the federal control act any pre-existing statute inconsistent therewith was repealed by implication. *Pacific Lumber Co. v. N. W. P. R. R. Co.* 738 (767).

STATUTE OF LIMITATIONS. See LIMITATION OF ACTION.

STEUBENVILLE, EAST LIVERPOOL & BEAVER VALLEY TRACTION CO.
History of. *City of East Liverpool v. S., E. L. & B. V. T. Co.* 563 (564).

STOPPAGE IN TRANSIT.

Alleging unreasonable charges on a carload of coal from Lilly, Pa., consigned to Elm Grove, Wis., subsequently reconsigned to North Milwaukee, Wis., due to failure of defendants to hold at Ludington, Mich., *Held*: Defendants acted within their rights in refusing to hold and divert at the request of a stranger to transportation record and charges were legally assessed. *Callaway Fuel Co. v. C., M. & St. P. Ry. Co.* 227.

STORAGE CHARGES.

On benzol, oils, sulphuric acid, charcoal, and chloride of sulphur, delivered to interchange siding at Midland, Mich., complainant moved shipments to points within its plant enclosure and held cars in excess of free time upon tracks constructed for use of complainant only. *Held*: Storage charges assessed found not legally applicable and refund directed. *Low Chemical Co. v. P. M. R. R. Co.* 1.

On staves, placed in out of way place at Andalusia, Ala., to await others sufficient to make a carload, found illegal inasmuch as they were not in transportation during the time they rested on defendant's right of way, and were not received for delivery by defendant nor held by it to complete a shipment or for forwarding directions. Reparation awarded. *Moore Stave Co. v. C. of G. Ry. Co.* 170.

Carload of machinery from Springfield, Ohio, consigned to forwarding company, Sixtieth Street, New York, but on account of embargo reconsigned to Thirty-third Street station. Part of shipment removed and remainder placed in storage and not removed until several months later. Demurrage and track storage charges not unreasonable. *Barber & Co. v. C., C. C. & St. L. Ry. Co.* 194.

Demurrage and storage charges are not assessed primarily for revenue purposes, but in part, at least, as a penalty to promote release and fullest use of equipment, tracks, and terminal houses, and the measure of such charges may not fairly be determined by the charges made by public warehouses. *Id.* (196).

Charges on dressed beef from various points to Boston, Mass., there stored and subsequently exported to France, found unduly prejudicial to traffic moving from the storage warehouse to the docks of the Boston & Albany at East Boston to the preference of similar traffic stored and subsequently forwarded to the docks of the Boston & Maine. *Armour & Co. v. B. & A. R. R. Co.* 244 (247).

Following *New York Produce Exchange*, 46 I. C. C., 666, assessment of storage at the ports of Newport News, Va., and New York, N. Y., on shipments of salmon on through export bills of lading from San Francisco, Calif., to London, England, not found unreasonable. *Peterson Co. v. A., T. & S. F. Ry. Co.* 401.

One of the tariff conditions precedent to the issuance of a through export bill of lading is that the shipper shall guarantee the payment of storage charges which may be occasioned at the ports. *Id.* (402).

STRANGER TO THE RECORD. See PARTIES.**SUBSEQUENTLY-ESTABLISHED RATES. See REDUCTION IN RATES (By CARRIERS).****SUPPLEMENTAL REPORT. See also REHEARING.**

In original report 42 I. C. C., 470, rates on gum and oak lumber, from Charleston, Miss., to Chicago, Ill., for P., C., C. & St. L. Ry. delivery, found illegal and reparation due. Defendants refused to verify reparation statement covering shipments not actually delivered by the Panhandle. Upon rehearing certain shipments found misrouted inasmuch as had shipments moved as routed lower rates would have applied, and on shipments unrouted, shipper entitled to lowest rates available. Reparation awarded. *Lamb-Fish Lumber Co. v. Y. & M. V. R. R. Co.* 6.

SUPPLEMENTAL REPORT—Continued.

Upon rehearing, class rates in official classification territory of dressed poultry, butter, eggs, and cheese, in any quantity, found to have been sufficiently high to include refrigeration, during period in question, when an extra charge was made. Finding in original report, 43 I. C. C., 392, reversed. Reparation denied. National Poultry, Butter & Egg Asso. v. B. & O. S. W. R. R. Co. 34 (50).

Upon rehearing, *Held*: reasonable rule for the transportation of caretakers accompanying one-car shipments of cattle, calves, hogs, and sheep from Missouri points to East St. Louis and National Stock Yards is to provide for their free transportation to market only. Dimmitt-Caudle-Smith Live Stock Commission Co. v. C., B. & Q. R. R. Co. 71 (77).

Reasonable divisions to the Florida, Alabama & Gulf R. R. Co., out of joint rates prescribed on yellow-pine lumber from Falco, Ala., to destinations on and north of the Ohio River and to points on the L. & N. R. R. in Tennessee and Kentucky, found to be 3 cents per 100 pounds. McGowan-Foshee Lumber Co. v. F., A. & G. R. R. Co. 317 (321).

Rates on pea and slack coal from the Walsenburg District, Colo., to points on the A., T. & S. F. Ry. in Kansas not shown unduly prejudicial compared with relationship between rates on slack and nut coal from the Trinidad and Canon City districts. Alliance Coal & Coke Co. v. C. & S. Ry. Co. 392 (394).

Order defining limits of standard time zones, 51 I. C. C., 273, modified so as to include Apalachicola, Fla., within the limits of the Eastern standard time zone. Standard Time Zone Investigation, 499.

Order defining limits of standard time zones; 51 I. C. C., 273, modified in part. Standard Time Zone Investigation, 555.

Upon petition for reconsideration of the finding in former report, 30 I. C. C., 597, that reparation should be denied, *Held*: Complainants and interveners are entitled to a finding as to the reasonableness of the rates during the 2 years immediately preceding the filing of the complaint. Thirty days allowed to present additional evidence. Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co. 635 (644).

SUSPENSION.

Since the amendment of 1910 any person can, upon making a sufficient showing of unreasonableness or unlawful discrimination, secure the suspension of any proposed rate. Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co. 635 (643).

SWITCH ENGINE.

Cost of operation in Spokane, Wash., stated to be over \$6 per hour. Yeakel Fuel Co. v. O.-W. R. R. & Nav. Co. 449 (450).

SWITCHING. *See also* INDUSTRIAL SWITCHING.

Switching charges at Fort Worth, Tex., on cotton from various points in Texas, there compressed and subsequently reshipped to certain interstate and foreign destinations, not shown unreasonable or unduly prejudicial as compared with switching charges absorbed at Dallas, Tex., and subsequently absorbed at Fort Worth. Bath & Co. v. Ft. W. & R. G. Ry. Co. 129.

Defendant's charge for switching cars to and from the point of connection between its line and complainant's at Bellewood, Ill., higher than exacted from carriers other than complainant, not found unreasonable or unduly prejudicial. Aurora, Elgin & Chicago R. R. Co. v. I. H. B. R. R. Co. 331.

Finding in 38 I. C. C., 510, that the Muncie & Western R. R. is a common carrier and refusal of trunk lines serving Muncie to absorb its switching charges to and from Ball Bros. Glass Works, and Gill Bros. Clay Pot Works, while absorbing such charges of the Muncie Belt and the Lake Erie Belt to and from the same industries is unduly prejudicial, adhered to. Reparation denied. Ball Bros. Glass Mfg. Co. v. C., C., C. & St. L. Ry. Co. 418 (422).

SWITCHING—Continued.

On certain cars placed for loading at Belt station 280, Walker County, Ga., owing to the frozen condition of the pits, it was impossible to excavate the clay. Cars were held pending moderation of weather and subsequently released and switched back empty to Chattanooga, Tenn. Demurrage and switching charges assessed not shown unreasonable. *Chattanooga Sewer Pipe & Fire Brick Co. v. B. Ry. Co.* of C. 447.

Charges of the O.-W. R. R. & Nav. Co. for switching coal and wood from interchange tracks near Lee street to complainant's place of business in East Spokane, Wash., not shown unreasonable or unduly prejudicial to complainant as compared with charges for switching from interchange tracks of the N. P. Ry. *Yeakel Fuel Co. v. O.-W. R. R. & Nav. Co.* 449.

Refusal of the S. P. Co. having line haul to absorb switching charges on non-competitive carload traffic from and to complainant's plant on a track connecting with the terminals of the A., T. & S. F. Ry. in San Francisco while absorbing such charges of a competitor on a track connecting with a belt line owned and operated by the state of California found to subject complainant to undue prejudice. *California Canneries Co. v. S. P. Co.* 500 (503).

Increased rates resulting from refusal of defendants to compensate complainant for expense of spotting cars moving interstate to and from its plant at Farrell, Pa., while performing a like service, without charge, for competitors similarly situated, found to subject complainant to undue prejudice and disadvantage. Reparation awarded. *Sharon Steel Hoop Co. v. P. Co.* 545.

Shipments of cattle loaded at Fort Worth, Tex., stock yards and switched to Hodge, which is within the switching limits of Fort Worth, for movement to destinations in Oklahoma. Tariffs in effect named lower rate on shipments loaded at Hodge, but inasmuch as shipments originated at Fort Worth, rates assessed found legally applicable and not unreasonable. *Carroll & Co. v. A., T. & S. F. Ry. Co.* 395.

TANK CARS.

Only 19.2 per cent of the tank cars in the United States have a gallonage capacity of less than 50,000 pounds. *Kentucky Peerless Distilling Co. v. L., H. & St. L. Ry. Co.* 209 (210).

TARIFF.

Whatever may have been the intention of its framers, a tariff is to be construed according to its terms. *Starks Co. v. C. & N. W. Ry. Co.* 335 (337).

TARIFF CIRCULAR. See ADMINISTRATIVE RULING.

TARIFF RULES.

The law imposes upon shippers the duty of ascertaining the rates and conditions under which they ship, and noncompliance by a shipper with tariff rules affords no basis for a finding that rate legally applicable is unreasonable or discriminatory. *Good-Hopkins Lumber Co. v. G. N. Ry. Co.* 99 (100).

TERMINAL SERVICE.

Ascertained costs of terminal service and 5-mile haul. Appendix 3. *National Poultry, Butter & Egg Assn. v. B. & O. S. W. R. R. Co.* 34 (54).

THROUGH AND LOCAL. See also SECTION 4.

Through rates admitted to be unreasonable to extent they exceeded combination of intermediate rates, but admission of carrier that a rate is unreasonable is not conclusive as to the reasonableness of a rate. *Sunderland Brothers Co. v. C., B. & Q. R. R. Co.* 21 (22).

Joint rates on cedar posts and poles from Silver Springs, Tenn., to Wilsonville, Palisade, and Hendley, Nebr., exceeded the aggregate of intermediate rates in effect via route of movement. Reparation awarded. *Bruer & Son v. N., C. & St. L. Ry.* 25.

THROUGH AND LOCAL—Continued.

Class A rates on Sudan grass seed from points in Texas to Oklahoma City, Okla., Lawrence and Atchison, Kans., and Kansas City, Mo., found legally applicable and not shown unreasonable as compared with lower commodity rate on sorghum seed, but rates to Kansas City found unreasonable to extent they exceeded combination of rates based on Argentine, Kans. Reparation awarded. *Barteldes Seed Co. v. A., T. & S. F. Ry. Co.* 111.

Combination rates based on Ohio River legally applicable on petroleum refined oil, in tank-car loads, from Franklin, Pa., to points in Kentucky exceeded the aggregates of the intermediate rates to and from Kentucky junction points. Reparation awarded. *Standard Oil Co. (Ky.) v. N. Y. C. R. R. Co.* 140.

Through rate on cyanamid from Niagara Falls, Ont., to Dothan, Ala., exceeded the aggregate of intermediate rates. Reparation awarded. *Virginia-Carolina Chemical Co. v. M. C. R. R. Co.* 172.

Commodity rate on fuel oil from Okmulgee, Okla., to Byrd, Tex., exceeded the aggregate of intermediate rates in effect to and from San Antonio, Tex. Reparation awarded. *American Refining Co. v. St. L.-S. F. Ry. Co.* 179.

On millet seed from Kanorado and Selden, Kans., to St. Louis, Mo., cleaned in transit at Beatrice, Nebr., charges for out of line haul found unreasonable and unlawful to extent they exceeded rate to St. Joseph, Mo., with transit privilege at Beatrice, plus proportional rate beyond. Reparation awarded. *Pease Grain & Seed Co. v. C., R. I. & P. Ry. Co.* 189.

Rates on hides, wool, and tallow, l. c. l., from certain points in Oklahoma and Texas to Wichita, Kans., exceeded aggregates of intermediate rates. Reparation awarded. *Johnston v. A., T. & S. F. Ry. Co.* 356 (359).

Through rates on potatoes from Rice, Minn., to certain destinations, exceeded the aggregate of intermediate rates. Reparation awarded. *Rice Potato Co. v. B. & O. R. R. Co.* 364 (368).

On l. c. l. shipments of sewing machines from Dayton, Ohio, to Bienville and other destinations in Louisiana, shipment to Bienville found overcharged and refund directed. Rates to other points found unreasonable to extent they exceeded the aggregate of intermediate rates on the lower Mississippi River crossings. Reparation denied. *Davis Sewing Machine Co. v. P., C., C. & St. L. Ry. Co.* 441.

Fifth class rate on sulphuric acid, in tank-car loads, from Baltimore, Md., to Gibbstown, N. J., exceeded combination of locals in effect and subsequently reduced. Reparation awarded. *Du Pont de Nemours Powder Co. v. P. R. R. Co.* 453.

Joint through rate on paper bags, l. c. l., from Middletown, Ohio, to Franklin, La., exceeded combination of intermediate rates in effect on New Orleans, La. Reparation awarded. *Advance Bag Co. v. C., C., C. & St. L. Ry. Co.* 467.

Fifth-class rate on glass bottles from Huntington, W. Va., to St. Paul, and Minneapolis, Minn., exceeded the lowest combination of intermediate rates. Reparation awarded. *Boldt Co. v. C., B. & Q. R. R. Co.* 491.

The fair measure of the reasonableness of a joint rate which exceeds a combination between the same points via the same route is the lowest combination that would apply if the joint rate were canceled. *Id.* (492).

Rates on potatoes from Carpenter and Otranto, Iowa, to points east of the Indiana-Illinois state line, found illegal to extent they exceeded the aggregate of intermediate rates on shipments moving via Austin, Minn., and the through rates from Lyle, a farther distant point, on shipments moving via Mason City, Iowa. Reparation awarded. *Varley-Wolter Co. v. B. & O. R. R. Co.* 493.

Joint rate legally applicable on sulphuric acid from Argentine, Kans., to Ishpeming, Mich., exceeded the aggregate of intermediate rates. Reparation awarded. *Aetna Explosives Co. v. A., T. & S. F. Ry. Co.* 513.

THROUGH AND LOCAL—Continued.

Sixth-class rates on corn from points in Indiana to Canada exceeded the aggregate of intermediate rates in effect to and from Detroit, Mich. Reparation awarded. *Young Grain Co. v. St. L. W. R. R. Co.* 523.

Rates on building brick from Boone, Iowa, to Loup City and Grand Island, Nebr., which exceeded the aggregate of intermediate rates and not protected by proper application, was unlawful. *Sunderland Bros. Co. v. C. & N. W. Ry. Co.* 630.

Joint rates on high explosives from North Birmingham, Ala., to Flintstone, Ga., exceeded aggregate of intermediate rates to and from Chattanooga, Tenn. Reparation awarded. *Aetna Explosives Co. v. S. Ry. Co.* 633.

Rate on glass bottles from Oklahoma to Waco, Tex., exceeded combination of locals based on Fort Worth. *Held:* Departure not protected by application and is therefore unlawful. *Waco Chamber of Commerce v. A., T. & S. F. Ry. Co.* 668 (669).

Joint and combination through rates made on specific bases applicable on various commodities from certain points in eastern, southern, and central states to certain destinations in Iowa found unreasonable and, where unprotected by fourth section applications, otherwise unlawful. Reparation awarded. *Heider Mfg. Co. v. C. G. W. R. R. Co.* 713.

Fourth section applications seeking authority to continue through rates on various commodities from specified interstate points to destinations in Iowa which exceeded the aggregate of intermediate rates, denied. *Id.* (718, 719).

THROUGH ROUTES AND JOINT RATES.

Prayer for establishment of through routes and joint rates on stock sheep from Montana points to South Dakota points, denied, as record indefinite and insufficient to determine whether the limiting provision of section 15 could or would be observed. *Albrecht v. N. P. Ry Co.* 601 (603).

TIME.

Limits of Eastern, Central, Mountain, and Pacific standard-time zones defined, as required by an act of Congress entitled "An act to save daylight and to provide standard time for the United States," approved March 19, 1918. *Standard Time Zone Investigation*, 273.

Standard time defined. *Id.* (277).

Table showing points at which important lines of railroad change from one standard of time to another. *Id.* (280).

Power of Congress is paramount as to regulation of interstate commerce, and as to objects enumerated in the daylight-saving act, state and municipal regulations may be controlling as to other matters involving standards of time to be observed within exclusive jurisdiction of local authority. *Id.* (283).

Government requirements for the maintenance of a given standard of time, as expressed in state statutes and municipal ordinances, respected as far as possible. *Id.* (283).

Effective dates of new zones. *Id.* (284).

Congress has not vested any discretion in the Commission as to the standards of time to be observed in Alaska. *Id.* (285).

Commission not empowered to fix standards of time for the Hawaiian Islands. *Id.* (285).

Boundary line between Eastern and Central zones. *Id.* (287).

Boundary between Central and Mountain zones. *Id.* (292).

Boundary of Mountain zone. *Id.* (296).

Sketch maps showing line prescribed between Eastern and Central time zones and showing railroads using such time. *Id.* (300).

TIME—Continued.

Sketch maps showing line prescribed between Central and Mountain time zones. Id. (304).

Sketch maps showing line prescribed between Mountain and Pacific time zones. Id. (308).

Order defining limits of standard time zones, 51 I. C. C., 273, modified so as to include Apalachicola, Fla., within the limits of the Eastern standard time zone. Standard Time Zone Investigation, 499.

Order defining limits of standard time zones, 51 I. C. C., 273, modified in part. Standard Time Zone Investigation, 555.

TON-MILE REVENUE. See EARNINGS.

TONNAGE. See VOLUME OF TRAFFIC.

TRACK-STORAGE CHARGES. See DEMURRAGE.

TRANSCONTINENTAL RATES.

Rates charged on nitrate of potash from Montchannin, Del., to Dupont, Wash., found unreasonable to extent they exceeded maximum authorized in *Transcontinental Commodity Rates Case*, 48 I. C. C., 79. Reparation awarded. *Du Pont de Nemours Powder Co. v. P. & R. Ry. Co.* 621.

TRANSFER CHARGE.

Collected without lawful tariff authority should be refunded. *Reliance Mfg. Co. v. I. C. R. R. Co.* 607 (608).

TRANSIT ARRANGEMENTS. See also STOPPAGE IN TRANSIT.

Cleaning: On millet seed from Kanorado and Selden, Kans., to St. Louis, Mo., cleaned in transit at Beatrice, Nebr., charges at through rate plus 2 cents per 100 pounds for out of line haul found unreasonable and unlawful to extent they exceeded through rates subsequently established. Reparation awarded. *Pease Grain & Seed Co. v. C., R. I. & P. Ry. Co.* 189.

Fattening and feeding: On sheep destined to Omaha, Nebr., and Sioux City, Iowa, failure of defendants to provide fattening or feeding-in-transit arrangements at South Dakota points not shown to result in undue prejudice. Defendants expressed willingness to establish such transit service with a reasonable charge therefor, and the Commission thinks such action desirable. *Albrecht v. N. P. Ry. Co.* 601 (603).

Inspection and assembling: On grain to Pittsburgh, Pa., inspected or assembled at Manchester yard and forwarded to elevators for transit services, including shipments weighed only, and forwarded in same cars at through rates from points of origin, complainant complied with necessary transit requirements. *Held*: Demurrage assessed at Pittsburgh found illegal. Reparation awarded. *Grain & Hay Exchange of Pittsburgh v. P. Co.* 723.

TRANSPORTATION.

Storage charges on staves, placed in out-of-way place at Andalusia, Ala., to await others to make a carload, found illegal inasmuch as they were not in transportation during the time they rested on defendant's right of way, as the staves were not received for delivery by defendant nor held to complete a shipment or for forwarding directions. Reparation awarded. *Moore Stave Co. v. C. of G. Ry. Co.* 170.

TRANSSHIPMENT.

Reparation denied on shipments of anthracite coal from Shenandoah, Pa., to Perth Amboy, N. J., for transshipment, following *Delaware, Lackawanna & Western Coal Co.*, 46 I. C. C., 506. *Locust Mountain Coal Co. v. L. V. R. Co.* 137.

Complainant not found damaged by the maintenance of a lower rate from Elkhorn and Beaver Valley branch of the Big Sandy division of the C. & O. Ry. to Newport News, Va., on coal for transshipment by water to points outside the Virginia Capes than was maintained from Harold and Pikesville, Ky. *Darby Coal Sales Co. v. C. & O. Ry. Co.* 370.

TRAP CAR SERVICE.

On shoe machinery and parts from Beverly, Mass., to interstate destinations, at request of defendant's agent cars sent to Salem for sorting and forwarding, which necessitated a back haul through Beverly. Tariff provided for charges in cases of back haul from stations at which transfer service was in fact performed. *Held*: Ferry car charges from Beverly to Salem not shown unreasonable. *United Shoe Machinery Co. v. B. & M. R. R.* 28.

Defined. *Id.* (28).

TWO CARS.

Following *Dulweber Co.*, 45 I. C. C., 549, and as compared with rate on a similar shipment from Sparta, Ill., to La Fayette, Ind., combination rate on a contractor's outfit, loaded on two cars, from McComb, Miss., to Walnut Ridge, Ark., not shown unreasonable. *Moreno-Burkham Construction Co. v. I. C. R. R. Co.* 138.

TWO FOR ONE.

On chairs s. u. and k. d., from Sheboygan, Wis., to Los Angeles, Calif., 50-foot car ordered, but two 40-foot cars furnished. Charges based on commodity rate with 12,000 pound minimum on each car assessed, *Held*: Had larger car been furnished entire shipment could have been loaded therein by knocking down a greater portion of the chairs. Charges illegal to extent they exceeded \$1.60 per 100 pounds; minimum 20,000 pounds on entire shipment. Reparation awarded. *Phoenix Chair Co. v. C. & N. W. Ry. Co.* 218.

UNDERCHARGES.

Rates on cyanamid in carloads from Niagara Falls, Ontario to Shreveport, and other points in the South found undercharged in certain instances. *American Cyanamid Co. v. M. C. R. R. Co.* 236.

UNDISCLOSED PRINCIPAL. See PARTIES.**UNIFICATION.**

No possible justification can be found under a unified and coordinated national control for a different treatment when shipments are destined to points on lines other than the Santa Fe. *Kaw River Sand & Material Co. v. A., T. & S. F. Ry. Co.* 350 (354).

VALUATION.

Valuation placed by defendants on its Chester line between East Liverpool, Ohio, and Chester, West Va., found excessive and following *Texas Midland Ry.*, 1 Val. Rep., 1, cost of reproduction determined by the Commission for purpose of this proceeding. *City of East Liverpool, Ohio, v. S., E. L. & B. V. T. Co.* 563 (566, 567).

VALUE. See also CUMMINS AMENDMENT; RELEASED RATES.

Rules in western classification under which the rates on emigrant movables, including live stock, are made dependent upon or varying with the value of ordinary live stock, declared in writing by the shipper found to be unlawful. *Carr v. C., M. & St. P. Ry. Co.* 205 (208).

Differences in mill-run values or in range of values of different grades of pine and cypress lumber do not justify differences in rates. *Independent Cooperative Lumber Co. v. L. W. R. R. Co.* 557 (559).

VALUE OF COMMODITY.

Fibers, paper makers': Value of, used in the manufacture of paper and of the finished product shown. *International Purchasing Co. v. A., C. & Y. Ry. Co.* 163 (164).

Printed matter: The value of, shown to depend not only on the quality of the paper but also on the character and amount of printing and on the quantities produced. *Memphis Freight Bureau v. C. & O. Ry. Co.* 731 (733).

VOLUME OF TRAFFIC.

Copper, scrap: From 40 to 50 cars are shipped from Atlanta, Ga., annually, most of which moves to eastern destinations. *Stein & Co. v. A., B. & A. Ry. Co.* 533 (534).

Water-borne: Stated of record that more water-borne traffic passes Detroit than any other point in the world. *Control of Water Carriers by Railroad Carriers.* 436 (437).

VOLUNTARY REDUCTION. *See* REDUCTION IN RATES (BY CARRIERS).

WAR.

War demands led to vastly increased shipments in domestic and foreign commerce and resulted in an unprecedented shortage of cars. *Oden-Elliott Lumber Co. v. A. C. Ry.* 403 (411).

War conditions should not be permitted to deprive any individual or locality of that equality of opportunity in respect to transportation which is insured alike by our fundamental economic policy and by the law. *Pacific Lumber Co. v. N. W. P. R. R. Co.* 738 (772).

WAREHOUSE.

A warehouse owner is not entitled to recover damages for depreciation in the rental value of his property as a result of leases by a railroad company of similar properties at nominal rentals to shippers. *Pittwood v. N. P. Ry. Co.* 535.

A warehouse owner, a landlord seeking to rent his property as such, has no relation with a common carrier which could result in a discrimination against him in violation of the act to regulate commerce. *Id.* (535).

WASTAGE.

Statement of ice wastage, 1914 over 1916, six large roads. *National Poultry, Butter & Egg Asso. v. B. & O. S. W. R. R. Co.* 34 (52).

WATER AND RAIL. *See also* RAIL-AND-WATER.

Shipment of dies and shafting from Chrome, N. J., billed to Galveston, Tex., rebilled to Silverton, Colo., as a device to obtain a combination rate which was thought to have been lower than the through rate. *Held:* Through shipment and rates legally applicable not shown unreasonable or unduly prejudicial. *Chrome Steel Works v. N. Y. & N. J. S. Co.* 727.

WATER CARRIERS. *See* BOAT LINES.WATER COMPETITION. *See* COMPETITION (Water).

WATER TRANSPORTATION.

Stated of record that more water-borne traffic passes Detroit than any other point in the world. *Control of Water Carriers by Railroad Carriers*, 436 (437).

WEAK LINE.

Operating deficit of the Denver & Salt Lake R. R., shown. *D. & S. L. R. R. Co. v. C., B. & Q. R. R. Co.* 679 (682).

WEATHER INTERFERENCE.

On certain cars placed for loading at Belt Station 280, Walker County, Ga., owing to the frozen condition of the pits, it was impossible to excavate the clay. Cars were held pending moderation of weather and subsequently released and switched back empty to Chattanooga, Tenn. Demurrage and switching charges assessed not shown unreasonable. *Chattanooga Sewer Pipe & Fire Brick Co. v. B. Ry. Co. of C.* 447.

WEIGHING.

Weighing and reweighing rules in substantial conformity with the "National Code of Rules Governing the Weighing and Reweighing of Carload Freight." prescribed in connection with shipments of coke from Benham, Ky., to Santa Ana and Los Alamitos, Calif. *Romann & Bush Pig Iron & Coke Co. v. L. & N. R. R. Co.* 128 (128).

On grain to Pittsburgh, Pa., inspected or assembled at Manchester yard and forwarded to elevators for transit services, some shipments being weighed only, complainant complied with all necessary transit requirements for forwarding

Weighing—Continued.

at through rates from points of origin. *Held*: Demurrage charges assessed at Pittsburgh found illegal. Reparation awarded. Grain & Hay Exchange of Pittsburgh v. P. Co. 723.

WEIGHT. See also MINIMUM WEIGHT.

Erroneous: On shipments of coke from Benham, Ky., to Birmingham, Ala., reconsigned to Santa Ana and Los Alamitos, Calif., reweighed at Los Angeles, and again at destination, charges based on point of origin weights found unreasonable. Romann & Bush Pig Iron & Coke Co. v. L. & N. R. R. Co. 126.

Erroneous: The fact that tariff prescribes that the point of origin weight will be used as the basis for assessing charges should not mean that an erroneous record of scale weight shall govern. *Id* (128).

Estimated: Strawberries: Estimated weight of 38 pounds per crate of 24 full quarts not shown improper. Providence Fruit & Produce Exchange v. American Exp. Co. 167 (169).

Origin v. destination: Evidence not sufficient to sustain allegation that charges on baled hay from certain points in Illinois to certain points in Massachusetts, New York, Pennsylvania, and Virginia were excessive in that they exceeded charges based on weights obtained at destination. Toberman, Mackey & Co. v. C. & E. I. R. R. Co. 469.



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